

Case Nos. 19-35017 and 19-35019

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADREE EDMO, AKA MASON EDMO,
Plaintiff-Appellee,
v.
IDAHO DEPARTMENT OF CORRECTION, et al.,
Defendants-Appellants
and
CORIZON, INC., et al.,
Defendants-Appellants

On Appeal from Orders of the United States District Court
For the District of Idaho
(No. 1:17-cv-00151-BLW)

**DEFENDANTS-APPELLANTS' JOINT MOTION
TO SUPPLEMENT THE RECORD ON APPEAL**

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Pursuant to Federal Rule of Appellate Procedure 10(e), Defendants-Appellants hereby move the Court to supplement the record on appeal with documents relevant to determining whether the District Court conducted a final trial on the merits and issued a permanent injunction in this case.¹

On May 30, 2019, the Ninth Circuit Court of Appeals ordered a limited remand to the District Court to resolve the following issues: (1) whether its order denying Defendants' motion for a stay pending appeal was meant to renew the injunction; (2) whether, as part of its ruling on Ms. Edmo's motion for preliminary injunction, the District Court also granted permanent injunctive relief; and (3) whether the District Court concluded that Ms. Edmo actually succeed on the merits of her Eighth Amendment claim for permanent injunctive relief. (Dkt. 90). The next day, the District Court responded and stated that (1) its order denying Defendants' motion to stay pending appeal was not meant to renew the injunction, (2) it had intended to grant a permanent injunction, and (3) the it had determined Ms. Edmo succeed on the merits of her Eighth Amendment claim for permanent injunctive relief. (Dkt. 91). In addition, the District Court renewed "[t]he preliminary mandatory relief . . ." it had previously granted. (*Id.*). In light of this Court's limited remand and the District Court's response, Defendants feel compelled to move to

¹On June 19, 2019, counsel for Defendants emailed this Motion and attached exhibits to Plaintiff's counsel inquiring if they would stipulate to supplement the record as requested in this Motion. Plaintiff's counsel emailed back the same day and said they would not so stipulate.

supplement the record on appeal with documents and information that bear on whether the District Court conducted a final trial on the merits and granted Ms. Edmo a permanent injunction.²

First, Defendants seek to supplement the record with the attached transcript of the District Court's Telephonic Status Conference held on January 30, 2019. During that status conference, the District Court stated that it had "full jurisdiction" while this case was pending on appeal and did not need to stay "the argument for permanent injunctive relief." (Ex. A at 9:16-19). This statement conflicts with the District Court's recent statements that, in 2018, it held a final trial on the merits, concluded Ms. Edmo had succeed on her claim for permanent injunctive relief, and issued a permanent injunction.

Second, Defendants seek to supplement the record on appeal with the District Court's Discovery Plan, (Ex. B), and Scheduling Order, (Ex. C). These were issued after the District Court's Order granting Ms. Edmo injunctive relief and allowed Plaintiff to file a Third Amended Complaint, Defendants to file an Answer and Jury Demand, and the parties to continue to litigate all of Plaintiff's claims and causes of action in preparation for a jury trial. Pursuant to these orders, Plaintiff has noticed

²By moving to supplement the record on appeal, Defendants do not waive any appeal, defenses, or objections to the District Court's Order issued on May 31, 2019 in response to this Court's limited remand (ECF No. 196).

depositions of various defendants and witnesses; these depositions appear to be related, at least in part, to issues of liability.

Finally, Defendants seek to supplement the record with the pleadings subsequently allowed by the District Court: (1) Plaintiff's Third Amended Complaint (without exhibits) (Ex. D); (2) Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery's Answer to Plaintiff's Third Amended Complaint and Demand for Jury Trial (Ex. E); and (3) IDOC Defendants' Answer to Plaintiff's Third Amended Complaint (Ex. F). These documents show that the parties filed pleadings related to all of Ms. Edmo's claims and causes of action and that Defendants have properly demanded a jury trial on all issues so triable in this case. Such filings are inconsistent with any assertion that there was a final trial on the merits in October 2018 regarding Ms. Edmo's request for injunctive relief. (Dkt. 91).

In summary, Defendants respectfully ask the Court to supplement the record with the aforementioned documents and transcript because they relate to the Court's limited remand and indicate that the October 2018 hearing was not a final trial on the merits.

This 20th day of June, 2019.

s/ Dylan A. Eaton

Dylan A. Eaton, ISB #7686

s/ Brady J. Hall

Brady J. Hall, ISB #7873

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANTS-APPELLANTS’
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filing on the date stated below to:

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EXHIBIT A

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P R O C E E D I N G S

January 30, 2019

(Telephonic status conference.)

THE COURT: All right. Counsel, I think we have everyone on. We're on the record in this matter, but we're -- it is really just a status conference to kind of get things moving and addressed.

Let me deal first with the stay. The motion was filed by the defendants, and I believe the plaintiff's brief is due today.

Ms. Whelan or Ms. Ferguson, Mr. Durham, I assume that is filed or will be filed before the end of the day?

MS. WHELAN: That's correct, Your Honor. Just to apologize on behalf of Ms. Rifkin, she is actually in trial today, so she couldn't be with us.

THE COURT: All right. Then, I believe -- I should know this, certainly. I can't remember if the defendants have seven or ten days under our local rule to file a reply.

I assume, though, there will be a reply filed, Mr. Eaton or Ms. Crecelius?

MS. CRECELIUS: Yeah, Judge. This is Marisa Crecelius, and we would plan to file a reply.

I had talked to Dylan earlier today, and we filed our joint status conference earlier in the month. We asked the court to consider the stay on an expedited basis, but it appears

1 as though we will just go forward with the schedule as set forth
2 by the local rules.

3 THE COURT: Mr. Eaton, you agree?

4 MR. EATON: Yes, Your Honor. We would plan to file a
5 reply.

6 THE COURT: All right. Then we will just wait until
7 the reply brief is filed. If it's filed before the time
8 provided by our local rules, would you please notify Mr. Cole,
9 Kyle Cole, in my chambers so that we can address it as soon as
10 it's filed?

11 MS. CRECELIUS: Yeah, we can do that.

12 THE COURT: That's Ms. Crecelius?

13 MS. CRECELIUS: Yes.

14 THE COURT: All right, Counsel.

15 MR. EATON: Dylan Eaton, Your Honor.

16 THE COURT: Thank you for identifying yourselves to
17 make it easier on the court reporter.

18 Counsel, let me just address a practical concern. If
19 this case proceeds in the ordinary course, it will take 18
20 months to two years to get a decision from the Ninth Circuit.

21 Has counsel explored the possibility -- and I don't
22 know the answer to this -- whether there is a process by which
23 the circuit might hear a matter on an expedited basis,
24 particularly where it would be an appeal from a preliminary
25 injunction? Typically in those matters, time is of the essence,

1 and I would hope they might be willing to expedite the process.

2 Again, we have an evidentiary record that's developed,
3 a three-day trial. So there is going to need to be time for
4 that.

5 But has counsel thought of that? Because I am acutely
6 aware of the fact that if -- regardless of whether I grant a
7 stay or don't grant a stay, someone's ox is going to be gored by
8 this if no stay is granted, and assuming the circuit agrees with
9 me, although I think that's somewhat doubtful.

10 My experience has been that the circuit court does not
11 view matters with the same sense of urgency that the trial
12 courts do. But if -- if no stay is granted, then, obviously,
13 the legal issue will not have a chance to be addressed by the
14 appellate court until after it's essentially a fait accompli.

15 But the alternative is also true that if a stay is
16 granted, then the urgency which the court expressed in its
17 decision will have been disregarded, because it will take us the
18 aforesaid 18 months to two years to get a decision from the
19 circuit.

20 I would think, under those circumstances, there might
21 be some arrangement -- and I, frankly, took a quick look at the
22 Federal Rules of Appellate Procedure and also the Ninth Circuit
23 rules, and I just didn't have time to go through it in detail.

24 But is there any potential that this matter could be
25 heard on an expedited basis?

1 MS. WHELAN: I think --

2 THE COURT: You're cutting out. Who is that?

3 MS. WHELAN: This is Ms. Whelan. Can you hear me?

4 THE COURT: Yes.

5 MS. WHELAN: So the briefing schedule is currently
6 expedited in accordance with the Ninth Circuit's general
7 practice regarding preliminary injunction appeals. So right
8 now, the appellant brief is due on February 6th. The appellee
9 brief is due on March 6th. And the reply -- the optional reply
10 is due on March 27th.

11 But you are correct that there hasn't yet been an oral
12 argument scheduled; but I suspect that the Ninth Circuit would
13 likely also expedite an oral argument, as I think they have done
14 in other cases that are up on preliminary injunction appeals.

15 I'm not sure if that's helpful.

16 THE COURT: All right. Did you address that fact in
17 the -- in your response to the defendants' motion to stay?

18 MS. WHELAN: I believe there is a footnote that sets
19 forth the briefing schedule, yes.

20 THE COURT: All right. Well, I'll take a look at
21 that. Obviously, the defendants can -- in their reply brief,
22 can address what, if any, impact that expedited schedule would
23 have.

24 So, given that -- and I don't know if counsel has any
25 experience in that regard -- assuming that that occurs, might a

1 decision be issued within six months, or do we know?

2 MS. WHELAN: I have heard, Your Honor -- this is
3 Ms. Whelan again -- from other counsel anecdotally that
4 they -- it does not take the Ninth Circuit as much time to rule
5 on preliminary injunction appeals. But, of course, nobody has
6 control over that, so I'm not sure.

7 THE COURT: All right. Mr. Eaton or Ms. Crecelius, do
8 you have any take on that?

9 MR. EATON: This is Dylan Eaton. I just don't know,
10 Your Honor.

11 THE COURT: All right.

12 MS. CRECELIUS: Judge, this is Marisa Crecelius. And
13 I'm not sure of that, either.

14 I would like to let the court know that we have filed
15 a motion yesterday to extend the briefing schedule by 30 days.

16 And I wanted to bring it to the court's attention
17 today that the reason I am standing in Brady Hall's place is
18 because he had a medical emergency, was hospitalized, and still
19 really unsure about the cause of his medical emergency and when
20 he will be able to return to the office, if at all.

21 And so that will extend our briefing schedule, if it's
22 granted by the court, the Ninth Circuit, 30 days or, you know,
23 perhaps less than that, depending on what they rule.

24 THE COURT: All right. Well, that helps. I
25 appreciate it. I'll take that up.

1 And I raise it because it, obviously, might bear upon
2 the court's consideration of the motion to stay. I don't know
3 how it will bear, but I think it's something I would have to
4 consider.

5 All right. The next issue that I have, and it's
6 somewhat related to the question of the stay, my sense is that,
7 since this is, in essence, an interlocutory appeal, that I am
8 not deprived of jurisdiction and we can proceed with all other
9 aspects of the case while that appeal is pending.

10 But I could be wrong on that issue because it's not
11 something I address every day, so I don't have a ready answer.

12 So let me inquire of the plaintiffs whether you agree
13 with that or not. Ms. Whelan, Ms. Ferguson, Mr. Durham?

14 MS. WHELAN: That is also our understanding,
15 Your Honor.

16 THE COURT: Mr. Eaton?

17 MR. EATON: Your Honor, I wasn't prepared to address
18 that today. I haven't researched that issue, so I'm not sure I
19 can give an opinion today on that. It may be interlocutory, and
20 I think that was some discussion we had with the court
21 previously in our informal conference, but -- I don't mean to
22 punt, but I'm not prepared to admit that yet.

23 THE COURT: That's fine.

24 Ms. Crecelius?

25 MS. CRECELIUS: I'm in the same position as Dylan.

1 I'm not certain of what the case law or the rules are on that
2 particular issue, but I do recall discussing it before. And we
3 would certainly be happy to look into it in our reply brief if
4 that's an issue for the stay.

5 THE COURT: All right. Now, is -- my impression of
6 the motion to stay -- and I have only looked at the -- well, I
7 have read the defendant's, but I haven't done anything more than
8 that. But my understanding is you're only requesting a stay of
9 the court's order granting the injunctive relief and did not
10 request a general stay of all other proceedings.

11 Mr. Eaton, is that correct?

12 MR. EATON: Yes, Your Honor, I believe that is
13 correct.

14 THE COURT: Ms. Crecelius?

15 MS. CRECELIUS: Yes, Your Honor.

16 THE COURT: All right. That being the case, then I'm
17 going to assume that I have full jurisdiction. I don't need to
18 stay any other proceeding, including, I assume, the argument for
19 permanent injunctive relief and the claim for damages.

20 However, if I am mistaken -- actually, we will look at
21 that independently, but I think it is -- the burden is upon the
22 parties to raise that as an issue if you feel that I do not have
23 jurisdiction while the appeal is pending.

24 I'm fairly confident of that based upon past
25 experience, but I just have not specifically looked at that

1 issue.

2 So we're going to proceed. And that means, then,
3 we'll turn next to the -- what we used to call the case
4 management order; but I have been overruled, and now we are
5 supposed to call it, I think, a scheduling order, I think. I
6 prefer the word "case management order," but I was told that I'm
7 causing all kinds of problems in the district because everyone
8 else calls it something else. And we didn't want to confuse
9 anyone, so I think it's a scheduling order.

10 So we -- I have looked at the dates. I think there
11 is -- you know, I could make an argument this should be treated
12 as a standard-track case; and if it were only a suit for
13 damages, I probably would do so.

14 But because there may be some oddity coming back from
15 the circuit that may make the issue of permanent injunction a
16 more complex issue, I'm willing to go along with the deadlines
17 that you have put together in part because they don't really --
18 they are not that much more extensive than what we would have
19 for a standard-track case.

20 I think the critical thing for the court is the
21 dispositive motion cutoff, which I understand is a year from
22 now, and that discovery -- I'm trying to look. I have
23 forgotten, but I think the discovery cutoff is August 15th. And
24 expert witnesses, which obviously is a very important factor in
25 the case, would be all completed by December 31st.

1 So I'm okay with that. I will tell you that in most
2 cases, I try to strong-arm counsel to some extent to expedite
3 that. But since this case is driven so much by the court's
4 decision on injunctive relief, I think -- and particularly where
5 counsel is going to be involved in briefing and arguing that
6 simultaneously while they are doing discovery, I'm going to be
7 more flexible with counsel and just go along with those
8 deadlines.

9 I am assuming everyone is on board with that and no
10 one has had some buyer's remorse about the dates and schedule
11 that you have put together.

12 Is that true from the plaintiffs?

13 MS. CRECELIUS: That's correct, Your Honor.

14 THE COURT: From the defendants?

15 MR. EATON: This is Mr. Eaton. Yes, we stand by the
16 litigation and discovery deadlines.

17 THE COURT: Ms. Crecelius?

18 MS. CRECELIUS: Yes, Your Honor. We stand by the
19 discovery and litigation plan previously filed and stipulated
20 to.

21 THE COURT: All right. The other thing that I
22 do -- I'm wondering, given Mr. Hall's medical condition, if we
23 need to have another status conference fairly quickly just to
24 see what, if any, impact that may have upon the case.

25 I normally, in complex cases, have a monthly status

1 conference. In this case, I don't know that I need it that
2 often, but I might have another one in about 30 days, which, by
3 then, I will have made a decision on the stay and the -- we'll
4 have maybe a better sense of what Mr. Hall's medical condition
5 is and then take up whether or not there is a need to do any
6 tweaking of the scheduling order.

7 But after that, I'll probably have a conference every
8 two months because I just don't know that I need to have that
9 much interaction with counsel.

10 Does that make sense to counsel? Plaintiffs first.

11 MS. WHELAN: Yes, Your Honor, that makes sense.

12 THE COURT: Ms. Whelan?

13 MS. WHELAN: Yes.

14 THE COURT: Mr. Eaton?

15 MR. EATON: Yes, Your Honor, that makes sense.

16 THE COURT: Ms. Crecelius?

17 MS. CRECELIUS: Yes, Judge. We agree.

18 THE COURT: All right. We could possibly give you a
19 date now or maybe we will just issue --

20 Well, Ms. Bracke, do you have a date roughly 30 days
21 from now when we could do another telephonic status conference?

22 THE CLERK: March 5th at 4:00 p.m.

23 THE COURT: Counsel, does that work for all of you;
24 starting with the plaintiffs?

25 MS. WHELAN: I am just pulling up our calendar.

1 Sorry, Your Honor.

2 THE COURT: Again, it's telephonic, so there won't be
3 any travel involved.

4 MS. WHELAN: Yes, that works.

5 THE COURT: Just one moment, Counsel.

6 Mr. Eaton?

7 MR. EATON: Yes, I'm available March 5th at 4:00,
8 Your Honor.

9 THE COURT: Ms. Crecelius?

10 MS. CRECELIUS: I am available at that time as well,
11 Judge.

12 THE COURT: All right. Just so we're clear, I believe
13 I'm in trial in Coeur d'Alene that week --

14 Correct? We have got -- the time difference is okay,
15 Ms. Bracke? I should have known. She never makes mistakes.

16 All right. Counsel, the last thing that I'm aware of
17 is the Idaho -- Corizon, actually, report to the court about
18 progress made, or maybe it was a joint report towards complying
19 with the court's order.

20 I was personally satisfied with the steps taken.
21 There is no indication that there is any dragging of their feet
22 despite the fact that they are requesting a stay.

23 Let me ask of the plaintiffs: Ms. Whelan, do you have
24 any concerns about that?

25 MS. WHELAN: Yes, Your Honor. We would be interested

1 in hearing if there has been further progress. And also, we are
2 not familiar with that surgeon who they identified in the
3 report, Dr. Stiller.

4 And so we would request additional information as to
5 why they believe that he would be qualified to perform that and
6 whether or not they have taken additional steps to schedule
7 anything with him or with any other of the surgeons that we also
8 provided to them.

9 THE COURT: Mr. Eaton or Ms. Crecelius, can you
10 respond?

11 MR. EATON: Your Honor, this is Dylan Eaton.

12 As far as I understand, the surgeon they have
13 identified is qualified to perform the surgery at issue. We
14 could, obviously, provide an update on qualifications if that's
15 ordered by the court.

16 We understand that plaintiffs have submitted some
17 other considerations that are out of state, but we would hope
18 the court would understand that there are a lot of factors,
19 including security. To the extent that a qualified surgeon can
20 be more local, in Idaho, I think that's the preferred course.

21 I would note that I don't -- it's not my understanding
22 that plaintiffs necessarily get to dictate who the surgeon is,
23 but maybe I'm wrong on that.

24 And as far as any further updates, I am aware that
25 Corizon has a contract with an off-site medical provider,

1 Dr. Alviso; and Corizon and IDOC are continuing to work with
2 that doctor to coordinate the surgery.

3 It's my understanding that there is another
4 appointment sometime in February with that Dr. Alviso, and that
5 Dr. Alviso has talked with the surgical coordinator to create
6 a -- what I was told is the layout plan leading up to the
7 surgery.

8 So that's the additional information I have at this
9 point.

10 THE COURT: All right. Well, I certainly think it's
11 clear plaintiffs don't have the right to pick a doctor, but I do
12 think they have the right to insist upon a doctor who, in fact,
13 is qualified to perform the surgery.

14 And so I think you probably need to exchange
15 information. And I think -- Mr. Eaton, I think providing
16 information about the qualifications of the designated doctor
17 would be in order; and, likewise, for the plaintiffs to provide
18 information about other options and not just, I mean,
19 essentially, anyone who is qualified to provide the surgery on
20 the West Coast, and then allow Corizon to make its decision.

21 And I think it has -- Corizon has some interest in --
22 in fact, perhaps all things being equal, they might have an
23 incentive to use someone recommended by the plaintiffs just to
24 avoid legal issues that may arise, but I don't have that issue
25 before me.

1 But I would ask counsel to work together on that. If
2 it's an issue, you can notify Mr. Cole, and we can have another
3 interim conference in fairly short order.

4 My sense, though, is that the defendants are moving
5 towards compliance with the court's order, including the
6 schedule, and will continue to do so unless a stay is issued
7 either by myself or by the Ninth Circuit. I assume that's the
8 case.

9 Mr. Eaton, do you have that intention?

10 MR. EATON: Yes, Your Honor. That's our intention.

11 And I guess I should add that the Idaho Department of
12 Correction and Corizon have identified individuals to work
13 together to proceed toward the surgery as well.

14 THE COURT: All right. Ms. Whelan, are you content,
15 then, with that? Not content but --

16 MS. WHELAN: Yes, Your Honor, that process.

17 THE COURT: Okay. Yeah.

18 MS. WHELAN: If we have any trouble working together,
19 I like your suggestion of reaching out, but we certainly share
20 your opinion that hopefully we can just cooperate and exchange
21 information freely.

22 THE COURT: All right. All of this makes me think
23 that the defendants would be wise to file their reply brief on
24 the motion to stay, on an expedited basis.

25 And the reason I say that is: The sooner you get the

1 brief in, the sooner we can issue a decision. And if our
2 decision is to deny that request, the sooner you can put it
3 before the circuit and have them rule upon it, which, in turn,
4 would -- if it's ultimately granted -- and I'm not saying one
5 way or the other whether I would or whether the circuit would --
6 but if it is, it seems to me there is some benefit in doing that
7 sooner rather than later, simply because a substantial amount of
8 effort and cost is going to be incurred otherwise.

9 So I'm not going to shorten the deadlines. But it
10 does strike me, Mr. Eaton and Ms. Crecelius, that there would be
11 an incentive for you to expedite that and perhaps get something
12 filed within the week so that we can issue a ruling one way or
13 the other.

14 But, again, it's up to you. You have the right under
15 our local rules to take more time. And I personally -- it
16 doesn't affect me a great deal one way or the other, but it does
17 just seem to me it would be a good idea for you, but that's your
18 call.

19 All right. I think that covers everything that I can
20 think of.

21 From the plaintiffs, anything else we need to take up
22 here?

23 MS. WHELAN: Nothing more from us, Your Honor.

24 THE COURT: From Corizon, Mr. Eaton?

25 MR. EATON: Nothing else at this time, Your Honor.

1 Thank you.

2 THE COURT: From IDOC, Ms. Crecelius?

3 MS. CRECELIUS: No, Your Honor. That's it for us.

4 THE COURT: Okay. Well, I don't want to pry, but I do
5 hope everything goes well with Mr. Hall. I don't -- well, I
6 won't pry. I'll just leave it at that. We'll just see how that
7 shakes out.

8 It's -- it may have an impact on us. But much more
9 importantly, any impact on him is certainly -- I'm sure counsel
10 and other co-counsel and plaintiff's counsel would agree, we
11 certainly wish him the best and give him our regards.

12 All right?

13 MS. CRECELIUS: Thanks.

14 THE COURT: If there is nothing else, Counsel, we will
15 end the call. Thank you.

16 (Proceedings concluded at 3:55 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

I, Tamara Hohenleitner, Federal Official Realtime Court Reporter, in and for the United States District Court for the District of Idaho, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 3rd day of June, 2019.

/S/ TAMARA I. HOHENLEITNER

TAMARA I. HOHENLEITNER, CSR NO. 619, CRR
FEDERAL OFFICIAL COURT REPORTER

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO

Plaintiff,

v.

IDAHO DEPARTMENT OF CORRECTION,
et al.

Defendants.

Case No. 1:17-cv-00151-BLW

DISCOVERY PLAN

I. Preservation

- a. **Preservation & Proportionality:** The parties have applied the proportionality standard in Rule 26(b)(1) to determine what information should be preserved and what information should not be preserved.
- b. **Electronically Stored Information (ESI):** The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:
 - i. All ESI created or received between January 2012 through the date of trial will be preserved, subject to Defendants' document retention practices. For example, IDOC does not maintain email

correspondence longer than 2 years from the date the email was created. Thus, some potentially responsive emails not subject to prior litigation hold(s) may not be available, although any in existence as of the time of the litigation hold(s) will be preserved moving forward.

- ii. Within 14 days of service of a Request for Production of Documents and/or Inspection under Federal Rule of Civil Procedure 34, the parties' ESI liaisons will meet and confer concerning the possible sources of ESI, the number and identity of the custodians whose ESI is to be searched, and a list of search terms and parameters.
- iii. Any party served with a Rule 34 Request for Production, agrees to make all reasonable efforts to produce an initial ESI response within the timeline for production, and to identify a date certain by which any remaining ESI will be produced thereafter.
- iv. **Cost Sharing:**

☐[The parties agree to share the cost of an electronic discovery vendor; shared document repository; or other cost saving measures]

☒[The parties agree to bear their own costs for preservation of e-discovery]

II. Initial Disclosures

- a. Pursuant to Rule 26(a), initial disclosures were provided on the following dates:

- Plaintiffs: June 29, 2018.
- Defendants: June 29, 2018.

The parties have agreed to serve supplemental initial disclosures relevant to the Third Amended Complaint by March 15, 2019. The parties may engage in discovery after the Court approves the discovery plan; the parties need not wait until the parties exchange supplemental initial disclosures or the Defendants file Answers to the Third Amended Complaint.

III. Scope of Discovery

- a. **Scope:** Discovery is necessary on the following subjects/issues in addition to those identified during discovery related to Plaintiff's motion for preliminary injunction. The parties recognize that this is a preliminary list of subjects meant to provide flexibility to the parties in future discovery. Defendants have expressed concern that some of the topics proposed by Plaintiff are overbroad and are not relevant to the claims raised in the Second Amended Complaint. Plaintiff intends to file a Third Amended Complaint that may remove and/or clarify claims. Following the filing of the Third Amended Complaint, the parties will meet and confer on or

before April 1, 2019 to discuss whether the below discovery topics need to be expanded or reduced.

- For Plaintiff:

1. Defendants' procedures and practices for evaluation and treatment of medical conditions other than gender dysphoria;
2. IDOC's disciplinary policies and procedures;
3. IDOC's parole policies and procedures;
4. IDOC's housing policies and procedures;
5. Training provided to custody and health staff regarding gender dysphoria;
6. Consideration, adoption, and implementation of IDOC's new gender dysphoria policy;
7. IDOC's disciplinary and punitive actions towards Plaintiff;
8. Plaintiff's damages as related to the claims contained in the operative complaint and limited by the Court's prior rulings (Dkt. 66);

- For Defense:

9. Plaintiff's damages claims as related to the claims contained in the Second Amended Complaint and limited by the Court's prior rulings (Dkt. 66);
10. Plaintiff's pre-incarceration medical, mental health, and social history, including but not limited to her history of

substance abuse, depression, anxiety, criminal conduct, incarceration, relationship history, and suicide and self-harm attempts;

11. Plaintiff's conduct and actions taken during her incarceration from 2012 to present, including but not limited to her mental health and medical treatment for GD and other conditions, relationship history, suicide and self-harm attempts, self-surgery attempts, disciplinary history, and claims of sexual and/or physical assault;

12. Depositions of inmates, parties, and witnesses, if any, relevant to Plaintiff's claims of disparate treatment raised in the Second Amended Complaint.

IV. Discovery Boundaries

a. **Limits:** The parties agree to limit future discovery as follows:

☒ Depositions to be noticed by each side (Plaintiff, IDOC

Defendants, Corizon Defendants): 20

☒ Interrogatories that may be propounded by Plaintiff to IDOC

Defendants collectively; by Plaintiff to Corizon Defendants

collectively; by IDOC Defendants collectively to Plaintiff; and by

Corizon Defendants collectively to Plaintiff: 30

☒ Requests for Production that may be propounded by Plaintiff to IDOC Defendants collectively; by Plaintiff to Corizon Defendants collectively; by IDOC Defendants collectively to Plaintiff; and by Corizon Defendants collectively to Plaintiff: 100

V. ESI

- a. **Checklist:** *The Court has attached the “Checklist” for ESI Discovery prepared by the Federal District Court for the Northern District of California to assist counsel in their meet-and-confer session. Counsel should refer also to Dist. Idaho L. Rule 16.1(c).*
- b. **Proportionality:** *Although not a hard and fast rule, a party from whom ESI has been requested in the typical case will not be expected to search for responsive ESI:*
 - *from more than 15 key custodians;*
 - *that was created more than 5 years before the filing of the lawsuit;*
 - *from sources that are not reasonably accessible without undue burden or cost; or*
 - *for more than 80 hours, inclusive of time spent identifying potentially responsive ESI, collecting that ESI, searching that ESI, and reviewing that ESI for responsiveness, confidentiality, and for privilege or work product protection. The producing party must be*

able to demonstrate that the search was effectively designed and efficiently conducted.

- c. **ESI File Format:** The parties agree to produce documents in the following file format[s] *[check any that apply]*:

☒ PDF;

☒ TIFF;

☒ Native; and/or

☒ Paper.

If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. The parties agree not to degrade the searchability of documents as part of the document production process.

- d. **Liaison:** Each party will identify a Liaison who is responsible for, and knowledgeable about (or has access to a person knowledgeable about), that party's ESI. This includes the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the Liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

- e. **Search:** The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in

discovery and filter out ESI that is not subject to discovery. The parties agree that they will provide a description of potential data sources (e.g. intranet, server, cloud, electronic corrections management systems, electronic mail, individual hard drives) that may contain relevant ESI, and any necessary information for constructing efficient and appropriate search terms for these data sources. The parties will then meet and confer about search terms and custodians, and will attempt to reach agreement. If the parties cannot reach agreement about search terms and custodians, they will use the Court's informal discovery resolution process, if available, before proceeding to noticed discovery motions

VI. Deadlines

- a. The deadline for the completion of fact discovery is: August 15, 2019.
- b. The deadline for completion of expert witness discovery is: December 31, 2019.

VII. Phasing

When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties agree to discuss whether phasing the production of ESI is appropriate. If phasing is necessary in order to achieve a timely production so that depositions and other discovery can proceed, the parties agree to meet and confer regarding a rolling production schedule.

VIII. Documents Protected From Discovery

- a. **Clawback:** Pursuant to Fed. R. Evid. 502(d), the parties request the Court to enter an Order that production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or work-product protection in this case or in any other federal or state proceeding. The Court will enter such an order in its CMO unless the parties object or otherwise request that no such order be issued during the telephone scheduling conference.

- b. **Quick Peek:** The parties

☒[agree that a “quick peek” process pursuant to Fed.R.Civ.P.

26(b)(5) is not necessary in this case]

☒[agree to a “quick peek” process pursuant to Fed.R.Civ.P.

26(b)(5) as set forth herein: _____].

- c. **Post-Complaint Communications:** Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log. Communications may be identified on a privilege log by category, rather than individually, if appropriate.

IX. Protective Order

- a. The parties have agreed to the terms of a Protective Order to protect proprietary and/or confidential material (ECF No. 94).

- b. The parties understand that, even if they agree to seal material filed with the Court, they must still file a motion to seal and obtain Court approval that the sealing meets the Ninth Circuit standards for sealing. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

Respectfully Submitted,

Dated: January 15, 2019

NATIONAL CENTER FOR LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

By: /s/ - Shaleen Shanbhag
Dan Stormer
Lori Rifkin
Shaleen Shanbhag
Attorneys for Plaintiffs

Dated: January 15, 2019

By: /s/ - Brady Hall
Brady Hall
Marisa S. Crecelius
Attorneys for IDOC Defendants

Dated: January 15, 2019

By: /s/ - Dylan A. Eaton
Dylan A. Eaton
Attorneys for Corizon Defendants

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTIONS,

Defendants.

Case No. 1:17-cv-00151-BLW

SCHEDULING ORDER
TRACK: (Standard)

In accordance with the agreements reached in the telephone scheduling conference held between counsel and the Court on **January 30, 2019**, and to further the just, speedy, and inexpensive determination of this matter,

NOW THEREFORE IT IS HEREBY ORDERED that the following recitation of deadlines and procedures will govern this litigation:

1. **Dispositive Motion Deadline:** All dispositive motions, including motions for punitive damages, must be filed by **January 31, 2020**.¹

¹ It is this Court's policy to accept only one (1) motion to dismiss and one summary judgment motion per party. If it appears, due to the complexity or numerosity of issues presented, that counsel is unable to address all issues within the twenty-page (20) limit for briefs, Dist. Idaho Loc. R. 7.1(b)(1), then it is appropriate to file a motion for permission to file an overlength brief, rather than filing separate motions for each issue. The Court prefers reviewing one over-length brief in support, one over-length brief in response, and one 10-page reply brief, if any, rather than the panoply of briefs that are generated when multiple motions are filed.

(Continued)

CASE MANAGEMENT ORDER - 1

2. Amendment of Pleadings and Joinder of Parties: Motions to amend pleadings and join parties, except for allegations of punitive damages, must be filed on **January 31, 2019**. Defendants shall provide Answers to the Third Amended Complaint on or before **March 15, 2019**. This deadline will only be extended for good cause shown.²
3. Alternative Dispute Resolution: The parties have chosen to participate in a **judicially supervised settlement conference**. ADR must be held by **within one month after the United States Court of Appeals for the Ninth Circuit issues an opinion on this Court's decision to grant a preliminary injunction**. Within seven (7) days of this Order, the parties are directed to contact Emily Donnellan, the ADR Administrator, at adr@id.uscourts.gov, so that she may assign a settlement conference judge and schedule a date for the settlement conference. Please ensure that all emails directed to adr@id.uscourts.gov contain the case number and title in the email subject line.
4. Discovery Plan: All discovery must be in accordance with the Federal Rules of Civil Procedure, the Local Rules for the District of Idaho, and the parties' joint discovery plan which is incorporated herein by reference.

² The Ninth Circuit has held that motions to amend filed after the Scheduling Order deadline are governed, not by the liberal provisions of Fed. R. Civ. P. 15(a), but instead, by the more restrictive provisions of Fed. R. Civ. P. 16(b) requiring a showing of "good cause." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

5. Clawback: Pursuant to Fed. R. Evid. 502(d), and Section [Click or tap here to enter text.](#)

of the parties' stipulated discovery plan, it is hereby ORDERED that production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or work-product protection in this case or in any other federal or state proceeding.

6. Completion of Fact Discovery: All fact discovery must be completed by **August 15, 2019**. This is a deadline for the completion of all fact discovery; it is not a deadline for discovery requests. Discovery requests must be made far enough in advance of this deadline to allow completion of the discovery by the deadline date.

7. Disclosure of Experts:

- a. The **Plaintiff** must disclose the experts intended to be called at trial on or before **September 16, 2019**.
- b. The **Defendant** must disclose the experts intended to be called at trial on or before **November 1, 2019**.
- c. **Plaintiff's** rebuttal experts must be identified on or before **November 26, 2019**.
- d. **ALL** discovery relevant to experts must be completed by: **December 31, 2019**.

8. Scheduling of Trial and Pretrial Conference. Plaintiff's counsel must contact courtroom deputy **Jamie Bracke** within one week following the entry of a decision on all pending dispositive motions to make arrangements for a telephonic trial setting conference with the Court to set pre-trial and trial deadlines. If no dispositive motion is filed, Plaintiff's counsel must immediately contact the courtroom deputy within one week of the dispositive motion filing deadline to set a telephonic trial setting conference.
9. Law Clerk: The law clerk assigned to this case is **Kyle Cole**. He may be reached at (208) 334-9363.
10. Discovery Disputes:
 - a. The I will **not** refer this case to a magistrate judge for resolution of discovery disputes and non-dispositive motions. I will keep these motions on my own docket.
 - b. The parties will strictly comply with the meet and confer requirements of [Local Rule 37.1](#) prior to filing any discovery motions.
 - c. Prior to filing any discovery motions, counsel must certify, not only that they have complied with [Local Rule 37.1](#), but that they have complied with the Judge's discovery dispute procedures.
 - d. In addition, I will not entertain any written discovery motions until the Court has been provided with an opportunity to informally mediate the parties' dispute. To facilitate that mediation, the attorneys will first contact Mr. Cole, the law clerk assigned to this case, and shall provide him with a

brief written summary of the dispute and the parties' respective positions.

Mr. Cole may be able to offer suggestions that will resolve the dispute without the need of my involvement. If necessary, an off-the-record telephonic conference with me will then be scheduled as soon as possible. I will seek to resolve the dispute during that conference and may enter appropriate orders on the basis of the conference. I will only authorize the filing of a discovery motion and written briefing if we are unable to resolve the dispute during the conference.

- e. Prior to filing any discovery motions, counsel must certify, not only that they have complied with Local Rule 37.1, but that they have complied with the foregoing procedures.
- 11. The Court will conduct **telephonic status conferences** with the parties. The Court will set those status conferences in a separate notice.
- 12. Calendaring Clerk: Scheduling matters and calendar issues may be directed to **Jamie Bracke**, who may be reached at (208) 334-9021. If reassigned, consult Judges' web page for staff directory.
- 13. Docketing Clerk: If you have a docketing question, please contact a docket clerk³ at (208) 334-1361.

³ The Clerk's office staff directory may be found on the Court's webpage: http://id.uscourts.gov/district/attorneys/DocketingCourtroom_Dep.cfm



DATED: January 31, 2019

B. Lynn Winmill

B. Lynn Winmill
United States District Judge

EXHIBIT D

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; and DOES 1-15;

Defendants.

Case No.: 1:17-cv-00151-BLW

THIRD AMENDED COMPLAINT

- 1. Failure to Provide Medical Treatment (8th Amendment)**
- 2. Violation of Equal Protection – Sex (14th Amendment)**
- 3. Violation of Equal Protection – Diagnosis (14th Amendment)**
- 4. Discrimination in Violation of Americans with Disabilities Act/Rehabilitation Act**
- 5. Discrimination in Violation of Affordable Care Act**
- 6. Negligence (Idaho State Law)**

INTRODUCTION

1. Plaintiff Adree Edmo is currently incarcerated by the Idaho Department of Corrections (“IDOC”) in Idaho State Correctional Institution in Kuna, Idaho. Ms. Edmo has been incarcerated since April 2012. Ms. Edmo is a transgender woman—an individual whose gender identity (female) is different from the male gender assigned to her at birth.¹ Ms. Edmo has been diagnosed by IDOC with gender dysphoria (previously known as Gender Identity Disorder), a serious medical condition characterized by strong cross-gender identification, and strong and persistent discomfort about one’s assigned sex. As a result of gender dysphoria, Ms. Edmo experiences severe dysphoria and distress resulting from the incongruence between her male physical features and her female gender identity. She requires medically necessary care to treat gender dysphoria.

2. The most common forms of treatment for gender dysphoria are counseling, the “real-life” experience of living full-time within the desired gender, hormonal therapy, and gender confirmation surgeries that conform primary or secondary sex characteristics with gender identity. Because gender dysphoria is not a mental disorder, counseling is aimed at providing coping mechanisms to deal with the discrimination and bias that transgender people typically experience from other people or institutions.

3. Prior to being incarcerated, Ms. Edmo lived full-time as a woman. Ms. Edmo is Native American and her Tribe recognizes that some individuals are Two-Spirit, a Native American concept encompassing cross-gender identifying and gender nonconforming individuals.

4. After she was diagnosed with gender dysphoria by IDOC, Ms. Edmo sought appropriate medical treatment, including access to feminizing hormones, evaluation for gender confirmation surgery,² and the ability to live as a woman while incarcerated. However,

¹ At birth, infants are classified as male or female based on a visual observation of their external genitalia. This classification becomes the person’s “sex assigned at birth,” but may not be the same as the person’s sex/gender identity.

² This is also sometimes referred to as “sex reassignment surgery.”

Defendants have refused to allow Plaintiff to access such medically necessary treatment, and instead have repeatedly punished Plaintiff for expressing her gender identity, including subjecting her to solitary confinement.

5. Defendants' denial of necessary medical treatment as well as discipline and punishment of Ms. Edmo for expressing her gender identity have caused grave and unnecessary suffering and harm to Ms. Edmo, including two attempted self-castrations.

6. Defendants' discipline and punishment of Ms. Edmo for expressing her gender identity has also negatively affected her eligibility for parole.

7. Defendants' actions violate the Eight Amendment to the U.S. Constitution's prohibition on cruel and unusual punishment by denying Ms. Edmo necessary medical treatment and failing to protect her from harm; the Fourteenth Amendment to the U.S. Constitution's guarantee of equal protection by discriminating against her based on sex, sex stereotyping, and/or gender identity as well as based on the diagnosis of gender dysphoria; the Americans with Disabilities Act and Section 504 Rehabilitation Act by discriminating against her in provision of medical treatment and participation in programs and services; the non-discrimination provision of the Affordable Care Act by discriminating based on sex, sex stereotyping, and/or gender identity; and Idaho tort law by negligently failing to provide Ms. Edmo treatment.

8. Ms. Edmo seeks injunctive and declaratory relief and damages to remediate Defendants' violations of her rights.

JURISDICTION AND VENUE

9. Plaintiff brings this suit pursuant to 42 U.S.C. § 1983, the Eighth and Fourteenth Amendments of the United States Constitution, the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a, and Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 and supplemental jurisdiction over Plaintiff's related state law negligence claim because it arises out of the same actions and omissions. Plaintiff

seeks declaratory and injunctive relief and damages for Defendants' violation of Plaintiff's civil rights.

10. Venue is appropriate in the District of Idaho pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to the claim occurred in this District.

11. Plaintiff has exhausted all administrative remedies with respect to the claims contained herein. A copy of Plaintiff's "Notice of Claim" is attached as Exhibit A to the Complaint. Copies of Plaintiff's IDOC grievances and appeals that are in her possession, as they relate to these claims, are attached as Exhibit B to the Complaint. Any further IDOC grievances deemed to contain complaints similar to those Plaintiff has already grieved are returned to Plaintiff and not allowed any further process.

PARTIES

12. Plaintiff ADREE EDMO is 31 years old and a United States citizen and member of the Shoshone-Bannock Tribe. She is currently housed at Idaho State Correctional Institution ("ISCI") in Kuna, Idaho. Plaintiff has been incarcerated in the custody of IDOC since April 2012.

13. Defendant IDAHO DEPARTMENT OF CORRECTION ("IDOC") is the State agency responsible for incarceration of adult inmates sentenced by the courts. IDOC operates nine adult correctional facilities in Idaho, including ISCI where Plaintiff is housed.

14. Defendant HENRY ATENCIO is the current Director of the Idaho Department of Correction.³ As Director, Defendant Atencio is the highest-level official in IDOC and is responsible for administering and overseeing the operations of IDOC, including the policies, procedures, and practices followed by IDOC, its contractors, employees, and agents. On information and belief, Defendant Atencio is also the final reviewer for treatment decisions by IDOC's Management and Treatment Committee. Mr. Atencio is sued in his official capacity.

³ Plaintiff originally named Kevin Kempf, who was then Director of IDOC. Since Plaintiff filed her suit, Mr. Atencio has been appointed Director and is automatically substituted as party in his official capacity. Fed. R. Civ. P. 25(d).

15. Defendant JEFF ZMUDA is the current Deputy Director of the Idaho Department of Correction. As Deputy Director, Defendant Zmuda is a member of IDOC's executive leadership team, and is specifically charged by IDOC policy to oversee implementation of health care services and treatment in IDOC including the development and implementation of standard operating procedures to effectuate health care delivery. Mr. Zmuda is sued in his official capacity.

16. Defendant HOWARD KEITH YORDY is and was at times relevant to the actions and omissions described herein, the Warden of ISCI where Plaintiff was housed. As Warden, Defendant Yordy is responsible for oversight of operations at ISCI, implementation of IDOC policies and procedures, staff training, welfare of inmates housed at the ISCI, and the supervisor of all other individual Defendants employed at ISCI. Defendant Yordy was a member of the Management and Treatment Committee for Plaintiff. Defendant Yordy also directly participated in review and denials of Plaintiff's requests for appropriate treatment for gender dysphoria, including implementing *de facto* policies regarding "feminine" appearance. Mr. Yordy is sued in his official and individual capacities.

17. Defendant CORIZON INCORPORATED ("CORIZON") is a private for-profit corporation contracted to provide healthcare, including medical and mental health treatment services, to inmates in the custody of IDOC, including inmates at ISCI where Plaintiff is housed. As IDOC's contract medical provider, Corizon is responsible for ensuring that proper medical, dental, psychiatric and psychological services, and treatment are provided to inmates incarcerated under IDOC's jurisdiction.

18. Defendant SCOTT ELIASON, M.D., was at all times relevant to the actions and omissions described herein the Regional Psychiatric Director for Corizon and a psychiatrist engaged to provide medical services at ISCI. Defendant Eliason is a direct medical provider to Plaintiff, is a member of the Management and Treatment Committee for Plaintiff, and directly participated in decisions to deny Plaintiff adequate and necessary medical treatment for gender dysphoria.

19. Defendant MURRAY YOUNG was at all times relevant to the actions and omissions described herein the Regional Medical Director for Corizon. Defendant Young also directly participated in treatment decisions for Plaintiff.

20. Defendant RICHARD CRAIG was the Chief Psychologist at ISCI until approximately the end of 2016, and engaged to provide medical services to inmates housed therein. Defendant Craig was a member of the Management and Treatment Committee for Plaintiff.

21. Defendant RONA SIEGERT was at all times relevant to the actions and omissions described herein the Health Services Director at ISCI and engaged to provide medical services to inmates housed therein. Defendant Siegert was a member of the Management and Treatment Committee for Plaintiff.

22. Defendant CATHERINE WHINNERY was at all times relevant to the actions and omissions described herein a medical provider engaged to provide medical services at ISCI. Defendant Whinnery is a direct medical provider to Plaintiff and directly participated in the denial of adequate and necessary medical treatment to Plaintiff for gender dysphoria.

23. DOES 1-10 (“Custody Does”) are additional custody supervisors and officers who were at all times relevant to the actions and omissions described herein employed at ISCI, and responsible for implementation of IDOC policies and procedures, and the welfare of inmates including Plaintiff. Custody Does supervised and/or participated in the disciplinary actions and denial of Plaintiff’s requests complained of herein. At the present time, the identities of Custody Does are unknown and not discoverable to Plaintiff without the relevant documents for her custody file, to which she does not presently have access. Plaintiff will substitute the true names of Custody Does when Plaintiff is able to ascertain their identities through discovery.

24. Does 10-15 (“Health Care Does”) are additional medical providers and staff who were at all times relevant to the actions and omissions described herein engaged to provide medical services at ISCI, and who were responsible for ensuring provision of appropriate medical care to Plaintiff and/or participated in the denial of adequate and necessary medical

treatment to Plaintiff for gender dysphoria. At the present time, the identities of Health Care Does are unknown and not discoverable to Plaintiff without discovery. Plaintiff will substitute the true names of Health Care Does when Plaintiff is able to ascertain their identities through discovery.

25. At all times relevant herein, each Defendant was acting in the course and scope of his or her employment and under color of state law.

FACTUAL ALLEGATIONS

Gender Dysphoria is Recognized as a Serious Medical Condition Requiring Treatment

26. Gender Dysphoria is a diagnosable and treatable condition recognized by the American Psychiatric Association and included in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (“DSM-V”), as well as the International Classification of Diseases-10 (World Health Organization).

27. Gender dysphoria is not a mental illness or disorder. Rather, “gender dysphoria” is a diagnostic term that refers to clinically significant distress associated with an incongruence or mismatch between a person’s gender identity and assigned sex. When gender dysphoria is severe, it can result in a person’s inability to function in everyday life. Gender dysphoria is highly treatable. Indeed, with appropriate treatment, individuals with gender dysphoria can be fully cured of all symptoms. When not properly treated, however, gender dysphoria is often associated with dangerous related conditions such as depression, substance abuse, self-mutilation, suicidal ideations, and suicide. Without treatment, the path for those suffering from gender dysphoria can be torturous, as evidenced by alarmingly high suicide attempt rates: 40 percent of persons identifying as transgender attempt suicide, nearly 9 times the national average of 4.6 percent, according to the 2015 National Transgender Discrimination Survey.⁴ Plaintiff’s history reflects such effects resulting from inadequate treatment: she has repeatedly experienced

⁴ Available at <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>

suicidal ideation and has engaged in dangerous attempts to self-harm and self-castrate as a response to her despair over her inability to access necessary treatment for her gender dysphoria.

28. The World Professional Association for Transgender Health (“WPATH”) is the leading international organization focused on transgender health care. WPATH has more than 1,000 members throughout the world consisting of physicians, psychiatrists, psychologists, social workers, surgeons, and other health professionals who specialize in the diagnosis and treatment of gender dysphoria. WPATH publishes the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (“Standards of Care”). The Standards of Care were first developed in 1979. The current version of the Standards of Care, Version 7,⁵ was published in September 2011 following a five-year process in which eighteen gender dysphoria specialists submitted peer-reviewed papers to help identify the most effective treatments for gender dysphoria. WPATH’s Standards of Care are the prevailing standards of care used by mental health providers and medical professionals treating gender dysphoria.

Just as With Other Medical Conditions, People with Gender Dysphoria Must Be Able to
Access Treatment Determined to Be Medically Necessary, Including Gender
Confirmation Surgery

29. IDOC Policy 401, “Clinical Services and Treatment,” states that it is IDOC’s policy to provide “proper medical, dental, psychiatric and psychological services, and treatment” to inmates.

30. IDOC Standard Operating Procedure 401.06.03.001, “Access to Care,” states that the purpose of the procedure is “to ensure that offenders have unimpeded access to healthcare services to meet their serious medical, dental and mental health needs.” It further explains that “The IDOC provides healthcare to offenders during incarceration that focuses on prevention and maintenance of the offender’s health status.”

⁵ Available at [https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20\(2\)\(1\).pdf](https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20(2)(1).pdf)

31. The goals of medical treatments for gender dysphoria, as stated in the Standards of Care, are (1) to alleviate clinically significant distress and impairment of functioning associated with gender dysphoria, and (2) to maximize overall psychological well-being.

32. As recognized by both the DSM-V and the Standards of Care, people with gender dysphoria who do not receive appropriate medical treatment are at risk of depression, anxiety, suicide, and genital self-harm, including attempts to perform auto-castration or auto-penectomy that can lead to serious and life-threatening injuries.

33. The Standards of Care set forth treatment options for gender dysphoria including: changes in gender expression and role (which may involve living part time or full time in another gender role, consistent with one's gender identity); hormone therapy to feminize or masculinize the body; surgery to change primary and/or secondary sex characteristics (e.g. breasts/chest, external and/or internal genitalia, facial features, body contouring); and psychotherapy addressing the negative impact of gender dysphoria and stigma on mental health, alleviating internalized transphobia, enhancing social and peer support, improving body image, or promoting resilience.

34. After a diagnosis of gender dysphoria is made, the Standards of Care require that a competent medical professional with knowledge and expertise in gender dysphoria evaluate a patient for appropriate and necessary treatment options. This medical treatment not only improves a patient's quality of life, but also limits the development of mental health issues which often accompany lack of treatment.

35. The Standards of Care also make clear that gender confirmation surgery is not an "elective procedure." Gender confirmation surgery is an "essential and medically necessary" treatment to alleviate gender dysphoria in some cases. Hormone therapy alone for those individuals is not sufficient.

36. In promulgating the Standards of Care, the WPATH specifies that they "apply to all transsexual, transgender, and gender nonconforming people, irrespective of housing situation, including in institutional environments such as prisons. The Standards of Care state that "[a]ll

elements of assessment and treatment as described in the SOC can be provided to people living in institutions...If the in-house expertise of health professionals in the direct or indirect employ of the institution does not exist to assess and/or treat people with gender dysphoria, it is appropriate to obtain outside consultation from professionals who are knowledgeable about this specialized area of health care.”

Defendants’ Failure to Provide Necessary Treatment and Discrimination Against Plaintiff

37. Plaintiff was born on October 29, 1987, in Pocatello, Idaho and grew up in Tyhee, Idaho. Plaintiff is a member of the Shoshone-Bannock Tribe.

38. Plaintiff’s Tribe recognizes individuals as Two-Spirit, a Native American concept encompassing cross-gender identifying and gender nonconforming individuals.

39. From a young age, Plaintiff identified with her sisters and other female family members, and would dress in women’s clothing. As a teenager, she identified as female and was not comfortable in the male gender that was assigned to her at birth. At around age 18, Plaintiff began living “part-time” as a woman, including wearing women’s clothing and make-up, and at around age 20 began living full-time as a woman. Plaintiff identifies as Two-Spirit within her Tribe.

40. Plaintiff began her current term of incarceration in April 2012. Soon thereafter, in or around July 2012, Plaintiff was diagnosed with gender dysphoria by Dr. Lake, a doctor treating her on behalf of IDOC.

41. IDOC Standard Operating Procedure 410.06.03.501 requires the “Management and Treatment Committee” to create an individualized management and treatment program for inmates with gender dysphoria. However, Defendants have repeatedly failed to provide Plaintiff with individualized care.

42. On information and belief, Defendants’ failure to provide Plaintiff with individualized care as required by IDOC policy reflects Defendants’ custom, practice, and/or *de facto* policy of failing to provide necessary medical treatment for persons with gender dysphoria.

43. After IDOC’s own medical provider diagnosed Plaintiff with gender dysphoria,

Plaintiff submitted numerous Corizon “Health Service Request” forms, and IDOC “Offender Concerns” forms related to medical needs resulting from gender dysphoria. These included requests for electrolysis for facial hair removal; medically appropriate doses of feminizing hormones; evaluation for gender confirmation surgery; change of gender marker on her IDOC identification card; female underwear; and the ability to purchase women’s cosmetics from commissary that are available to female prisoners.

44. From 2012 through 2016, Defendants largely denied and/or ignored Plaintiff’s requests. For example:

- a. On or around December 3, 2012, Defendant Whinnery denied Plaintiff’s request for an increased dosage of estrogen and recorded in Plaintiff’s medical record that “policy is to maintain current doses” and informed Plaintiff that IDOC limits estrogen dosages to 3 mg, regardless of inmates’ individual needs.
- b. On or around October 16, 2013, Plaintiff requested a medical memo that would allow her to possess gender-appropriate undergarments. This request was denied without consideration of her individual needs or development of an individualized treatment plan. Defendant Whinnery stated IDOC does not allow “female panties” for male inmates.
- c. On or around November 16, 2013, Plaintiff requested medication to decrease facial hair. Defendant Young saw Plaintiff approximately one-and-a-half months later and refused to discuss any changes to medications.
- d. On or around December 16, 2013, during a medical appointment with Defendant Young, Plaintiff again requested a medical memo that would allow her to possess gender-appropriate undergarments. Defendant Young indicated that she had to receive approval from security staff. On or around December 22, 2013, Defendant Warden Carlin denied Plaintiff’s request.
- e. On or around February 11, 2014, Plaintiff requested an appointment with a gender dysphoria specialist and gender confirmation surgery. Health service

Administrator Linda Gercke coordinate with Defendant Young and refused Plaintiff's request as "not medically necessary."

- f. On or around March 12, 2014, Defendant Yordy refused Plaintiff's requests to live in a manner consistent with her female gender because she is "housed within a male prison."
- g. On or around July 3, 2014, during a medical appointment with Defendant Whinnery, Plaintiff requested an evaluation for the medical necessity of gender confirmation surgery. Defendant Whinnery refused and stated words to the effect that "IDOC will not allow me to approve or recommend any medical treatment regarding sex reassignment surgery without a court order."
- h. On or around September 20, 2014, Plaintiff requested to be seen by a qualified gender identity evaluator, and her request was not answered.
- i. On or around October 8, 2014, during a medical appointment with Defendant Whinnery, Plaintiff again requested approval to purchase women's underwear. Defendant Whinnery refused citing IDOC policy not to issue a medical memo for female underwear to inmates with gender dysphoria.
- j. On or around January 8, 2015, during a medical appointment with Defendant Whinnery, Plaintiff requested an evaluation for gender confirmation surgery. Defendant Whinnery refused, saying this would not be provided without a court order.
- k. On or around April 20, 2016, Plaintiff was seen by Defendant Eliason and requested gender confirmation surgery. Defendant Eliason told Plaintiff words to the effect that "It would be a lot easier if you acted like a man, got out, and then you could do anything you want."

45. As a result of Defendants' failure to adequately treat Plaintiff's gender dysphoria, Plaintiff experienced severe symptoms related to this condition, resulting in one suicide attempt and two attempts to self-castrate. In February 2014, Plaintiff attempted suicide as a result of

learning that Defendants were denying her treatment for gender dysphoria. On September 29, 2015, Plaintiff attempted to self-castrate by using a razor blade to cut her testicle. On December 31, 2016, Plaintiff used a razor blade to cut her scrotum, pulling out the entire right testicle.

46. In response to Plaintiff's September 29, 2015 castration attempt, she was given sutures to close the laceration, and then put on suicide watch for approximately 72 hours, and then placed in the "Behavioral Housing Unit" at the prison without any further medical treatment.

47. In response to Plaintiff's December 31, 2016 castration attempt, she was transported to an outside hospital and given surgery to repair her self-castration attempt. Plaintiff was heavily medicated during her time at the outside hospital and is unaware if anyone at that outside medical facility spoke with IDOC or Corizon staff about a medical option of removing rather than repairing her testicle.

48. After this castration attempt, a clinician threatened Plaintiff that if she cut herself again, she would be placed in a maximum security prison.

49. From 2012 until December 2016, Defendants refused to evaluate Plaintiff's requests for evaluation of the medically appropriate dose of feminizing hormones.

50. In or around December 2016, Defendants provided Plaintiff with one-time access to an outside medical provider who evaluated her dosage of hormones and other medications related to gender dysphoria. This medical doctor significantly raised Plaintiff's dose of estradiol and spironolactone, and additionally prescribed her progesterone. However, since that date, Plaintiff has not had any follow-ups with this outside provider nor are any scheduled. Also since that date, despite the substantial changes in medication, Plaintiff's blood levels have not been measured nor has there been other necessary monitoring of the effects of the medications, or evaluation of whether she is now receiving appropriate dosages of the medications.

51. Moreover, during Plaintiffs' December 2016 visit with the outside provider, when Plaintiff sought to discuss the appropriateness of gender confirmation surgery, the outside provider informed her that he was unable to discuss this with her because it was outside of his

contract with IDOC.

52. Defendants' refusal to provide Plaintiff with access to a qualified medical provider with expertise in gender dysphoria to assess her need for gender confirmation surgery reflects Defendants' policy, procedure, custom, and/or practice of failing to provide adequate and necessary medical treatment to persons with gender dysphoria.

53. IDOC Standard Operating Procedure 401.06.03.001, "Access to Care," prohibits "unreasonable barriers" to inmates' access to healthcare services, including "[p]unishing offenders for seeking care for their serious health needs" and directs that "non-health care services staff (i.e. security staff) must not be allowed to approve or deny requests for healthcare made by an offender. Non-healthcare services staff must forward requests for healthcare at the facility for review and action if necessary."

54. Throughout Plaintiff's incarceration, Defendants have repeatedly disciplined and punished her for expressing her gender identity in a manner that did not pose any legitimate threat to the safety and security of the prison and that were related to gender dysphoria. For example, Defendants issued "Disciplinary Offense Reports" ("DORs") to Plaintiff for, *inter alia*:

- a. "Destruction of Property under \$25" for converting state-issued men's underwear into a style similar to women's underwear to provide more support, for which Plaintiff was charged to pay restitution;
- b. "Disobedience to Orders" for wearing "eyeliner makeup," resulting in commissary restriction for 15 days;
- c. "Possession of unauthorized property" for having "eyelash makeup with an eyelash applicator," resulting in commissary restriction;
- d. "Disobedience to Orders" for "hair in a bun that was above ear line," resulting in 5 days in disciplinary segregation;
- e. "Disobedience to Orders" for "hair in a high pony tail styled in a feminine fashion," which was subsequently dismissed;
- f. "Disobedience to Orders" for a "feminine hairstyle," resulting in 20 days

commissary restriction and 20 days recreation restriction;

55. Makeup items from the IDOC commissary are available to female inmates.

56. Defendants' discipline of Ms. Edmo for expressing her gender identity has also resulted in her ineligibility for parole. Ms. Edmo was informed that she would no longer be considered for early release because of her disciplinary record, a substantial portion of which is comprised of Defendants' punishment of her for expressing her gender identity. As a result, Ms. Edmo has stopped being considered for parole and, on information and belief, will not be considered in the future.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Failure to Provide Necessary Medical Treatment (8th Amendment; 42 U.S.C. § 1983)

Against ALL Defendants Except IDOC

57. Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as if fully set forth herein.

58. Plaintiff has been diagnosed with the serious medical condition of gender dysphoria, which continues to cause Plaintiff serious mental distress and, without necessary treatment, has resulted in serious physical harm to Plaintiff.

59. Defendants are responsible for providing adequate and necessary medical treatment to Plaintiff, including treatment for persons diagnosed with gender dysphoria.

60. Defendants have failed to follow even IDOC's own policies relating to Plaintiff's treatment. For example, Defendants failed to convene and/or conduct the necessary IDOC Management and Treatment Committee meetings to meaningfully evaluate Plaintiff's treatment for gender dysphoria.

61. Defendants have failed to provide adequate and necessary treatment to Plaintiff that is consistent with prevailing medical standards of care for gender dysphoria.

62. Defendants' acts and/or omissions with respect to Plaintiff's treatment reflect Defendants' policy, custom, practice and/or procedure of failing to provide adequate and

necessary medical treatment to inmates with gender dysphoria.

63. Each Defendant has been and remains deliberately indifferent to Plaintiff's medical need to be adequately treated for gender dysphoria, including but not limited to evaluation for gender confirmation surgery by qualified medical personnel with expertise in the diagnosis and treatment of gender dysphoria and provision of such surgery, if determined appropriate, as well as other medical treatments and accommodations that would alleviate Plaintiff's serious medical symptoms. Each Defendant has known of Plaintiff's serious medical need for treatment for gender dysphoria and failed to take reasonable measures to address Plaintiff's continued pain and suffering resulting from her inadequately treated gender dysphoria.

64. Defendants' continued denial of necessary medical treatment for gender dysphoria is causing irreparable harm and unnecessary suffering to Plaintiff, including severe anxiety and distress resulting in emotional, psychological, and physical harm.

65. Defendants' failure to provide necessary medical treatment to Plaintiff violates the Eighth Amendment to the U.S. Constitution.

66. As a direct and legal result of Defendants' actions and omissions, Plaintiff has suffered and continues to suffer damages including, without limitation, pain and suffering; emotional, psychological, and physical distress; violation of dignity; and other pecuniary losses not yet ascertained.

67. Individual Defendants and Corizon, by engaging in the aforementioned acts or omissions and/or in ratifying such acts or omissions, engaged in willful, malicious, intentional, and/or oppressive conduct, and/or acted with willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the award of punitive and exemplary damages in an amount to be determined at trial.

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SECOND CLAIM FOR RELIEF

Violation of Equal Protection – Discrimination Based on Sex (14th Amendment; 42 U.S.C.

§ 1983)

Against ALL Defendants Except IDOC

68. Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as if fully set forth herein.

69. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on sex is presumptively unconstitutional and subject to heightened scrutiny.

70. Defendants have discriminated against Plaintiff based on her sex by failing to provide adequate and necessary medical treatment for gender dysphoria and by disciplining her based on Defendants' sex-based stereotyping about the ways in which Plaintiff should appear, act, and express herself based on her sex assigned at birth.

71. In particular, Defendants have withheld adequate medical care from Plaintiff because she is transgender, because she is attempting to transition genders, and/or because of their sex-based belief that people who are assigned the male sex at birth should not receive medically necessary care that feminizes their bodies.

72. Defendants denied various requests and/or permitted the denial of requests by Plaintiff for commissary products allowed to similarly situated female inmates, including but not limited to women's underwear and cosmetics. Defendants also disciplined Plaintiff for wearing her hair in hairstyles deemed to be "feminine" that are allowed for similarly situated female inmates.

73. Defendants also disciplined and/or permitted the discipline of Plaintiff for sex-based behaviors because she is transgender, because she is attempting to transition genders, and/or because of the sex-based belief that people who are assigned the male sex at birth should display only stereotypically male characteristics, behaviors, or dress. Defendants thus treated Plaintiff differently based on her sex and her perceived non-conformity with sex stereotypes, including the expectation that a person's gender must conform to the sex assigned at birth.

74. Defendants' treatment of Plaintiff is based on her sex assigned at birth and sex-based stereotypes that Plaintiff should express herself in a manner that does not include wearing of cosmetics, "feminine" hairstyles, women's underwear, and other "feminine" behaviors and/or expressions.

75. Defendants discriminated against Plaintiff because of sex, sex stereotyping, and/or gender identity pursuant to official policies, procedures, customs and/or practices.

76. Defendants' discriminatory treatment of Plaintiff because of sex, sex stereotyping, and/or gender identity deprives Plaintiff of her right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

77. Defendants' discrimination against Plaintiff because of sex, sex stereotyping, and/or gender identity is not substantially related to any important government interest, nor is it even rationally related to any legitimate government interest. Defendants' discrimination against Plaintiff because of sex, sex stereotyping, and/or gender identity is also not reasonably related to legitimate penological interests.

78. As a direct and legal result of Defendants' actions and/or omissions, Plaintiff has suffered and continues to suffer damages including, without limitation, pain and suffering; emotional, psychological, and physical distress; violation of dignity; and other pecuniary losses not yet ascertained.

79. Individual Defendants and Corizon, by engaging in the aforementioned acts and/or omissions and/or in ratifying such acts or omissions, engaged in willful, malicious, intentional, and/or oppressive conduct, and/or acted with willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the award of punitive and exemplary damages in an amount to be determined at trial.

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THIRD CLAIM FOR RELIEF

Violation of Equal Protection – Discrimination Based on Diagnosis of Gender Dysphoria

(14th Amendment; 42 U.S.C. § 1983)

Against ALL Defendants Except IDOC

80. Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as if fully set forth herein.

81. IDOC policies require that prisoners with serious medical conditions be provided with appropriate and necessary medical care. IDOC Policy 401, “Clinical Services and Treatment,” states that it is IDOC’s policy to provide “proper medical, dental, psychiatric and psychological services, and treatment” to inmates. IDOC Standard Operating Procedure 401.06.03.001, “Access to Care,” provides that “in a timely manner, an offender patient can be seen by a clinician, be given a professional clinical judgment, and receive care that is ordered,” and that healthcare for inmates focuses on “prevention and maintenance of the offender’s health status.” The policy requires that “[u]pon identification of any medical or mental health need requiring evaluation and/or intervention by a physician . . . or mental health professional, arrangements must be made to provide timely examination, assessment, ,and/or treatment by scheduling an appointment with the appropriate practitioner” IDOC Directive 401.06.03.035, “Mental Health Care/Evaluation and Assessment,” provides that treatment needs be addressed as soon as possible, and inmates who require acute mental health services beyond those available at the prison will be transferred to an appropriate facility which may include a facility in the community.

82. Defendants diagnose and treat similarly situated IDOC inmates with mental health diagnoses and medical conditions other than gender dysphoria according to the IDOC policies, including those described above, regardless of whether such diagnosis and/or treatments are not common practices, or are unpopular treatments.

83. Defendants have failed, and continue to fail, to provide Plaintiff treatment according to IDOC policies because of her diagnosis of gender dysphoria.

84. By official policy, procedure, custom and/or practice, Defendants discriminate against transgender inmates diagnosed with gender dysphoria, including Plaintiff, by providing them with inferior medical care as compared to similarly situated inmates with medical and mental conditions and/or diagnoses other than gender dysphoria.

85. Defendants' discriminatory treatment of Plaintiff because of her diagnosis of gender dysphoria deprives Plaintiff of her right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

86. Defendants' discrimination against Plaintiff based on her diagnosis of gender dysphoria is not substantially related to any important government interest, nor is it even rationally related to any legitimate government interest. Defendants' discrimination against Plaintiff based on her diagnosis of gender dysphoria is also not reasonably related to legitimate penological interests.

87. As a direct and legal result of Defendants' actions and omissions, Plaintiff has suffered and continues to suffer damages including, without limitation, pain and suffering; emotional, psychological, and physical distress; violation of dignity; and other pecuniary losses not yet ascertained.

88. Individual Defendants and Corizon, by engaging in the aforementioned acts or omissions and/or in ratifying such acts or omissions, engaged in willful, malicious, intentional, and/or oppressive conduct, and/or acted with willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the award of punitive and exemplary damages in an amount to be determined at trial.

FOURTH CLAIM FOR RELIEF

Discrimination on Basis of Disability (Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794a)

Against Defendants IDOC and Corizon

89. Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as if fully set forth herein.

90. Based on her diagnosis of gender dysphoria, Plaintiff suffers from a “disability” within the meaning and scope of 42 U.S.C. § 1202, which has been recognized and documented by Defendants. Accordingly, Plaintiff is a member of the class of persons protected by the ADA and Section 504 of the Rehabilitation Act, which make it unlawful for a public entity and entities receiving federal funds to discriminate against an individual with a disability, or to deny the benefits of the services, programs, or activities of a public entity or entity receiving federal funds to a person with a disability.

91. Defendants discriminated against Plaintiff because of her disability and denied her the benefits of public services, programs and activities as a result of her disability by, *inter alia*, failing to provide adequate and necessary medical treatment; failing to provide proper and reasonable training to custody and health staff in responding to persons with gender dysphoria; and by disciplining Plaintiff for actions or behavior related to gender dysphoria and imposing punishments depriving Plaintiff of programs and activities because of such actions or behavior in a manner detrimental to her health.

92. Defendants’ acts and omissions violated the ADA and Section 504, which prohibit discrimination on the basis of physical and mental disability, and protect persons such as Plaintiff from the type of injuries and damages set forth herein.

93. Defendant IDOC is not entitled to immunity from suit under the Eleventh Amendment for this cause of action.

94. As a direct and legal result of Defendants’ actions and omissions, Plaintiff has suffered and continues to suffer damages including, without limitation, pain and suffering; emotional, psychological, and physical distress; and other pecuniary losses not yet ascertained.

FIFTH CLAIM FOR RELIEF

Violation of Affordable Care Act (42 U.S.C. § 18116)

Against Defendants Atencio, Zmuda, and Yordy in their official capacities

95. Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as if fully set forth herein.

96. Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116, prohibits covered entities from discriminating on the basis of sex for the purpose of providing health care services.

97. Covered entities include “any health program or activity, any part of which is receiving Federal financial assistance.” IDOC is a covered entity subject to the ACA’s nondiscrimination requirement.

98. As set forth above, Defendants have and continue to discriminate against Plaintiff on the basis of sex when they deny her adequate and necessary medical treatment on the basis that she is transgender, has been diagnosed with gender dysphoria, and is attempting to transition genders.

99. As set forth above, Defendants have and continue to discriminate against Plaintiff on the basis of sex when they deny her adequate and necessary medical treatment on the basis of sex stereotyping and/or a belief that people who are assigned the male sex at birth should display only stereotypically male characteristics, behaviors, and dress.

100. As a direct and legal result of Defendants’ actions and omissions, Plaintiff has suffered and continues to suffer damages including, without limitation, pain and suffering; emotional, psychological, and physical distress; violation of dignity; and other pecuniary losses not yet ascertained.

SIXTH CLAIM FOR RELIEF

Negligence (Idaho State Law)

Against Defendants Atencio and Zmuda, in their official capacities; Defendant Yordy in his official and individual capacity; Defendant Corizon; and Defendants Custody Does

101. Plaintiff repeats and re-alleges the allegations in all preceding paragraphs as if fully set forth herein.

102. Defendants failed to comply with professional standards in the treatment, care, and supervision of Plaintiff during her incarceration at ISCI. Defendants’ failures include but are not limited to: failing to provide timely and necessary medical treatment; disciplining and punishing Plaintiff for behaviors and actions reflecting her medical diagnosis and seeking

medical treatment; and failing to house Plaintiff safely.

103. Defendants also failed to appropriately supervise, review, and ensure the provision of adequate care and treatment to Plaintiff by custody and medical staff, and failed to enact appropriate standards and procedures that would have prevented the harm that she has experienced.

104. Together, Defendants acted negligently and improperly, breached their respective duties, and as a direct and proximate result, Plaintiff suffered injuries and damages as alleged herein.

105. The negligent conduct of Defendants was committed within the course and scope of their employment.

106. The aforementioned acts of individual Defendants and Corizon were conducted with conscious disregard for the safety of Plaintiff and others, and were therefore malicious, wanton, and oppressive. As a result, Defendants' actions justify an award of exemplary and punitive damages to punish the wrongful conduct alleged herein and to deter such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests entry of judgment in her favor and against Defendants as follows:

- a. For injunctive and declaratory relief, including but not limited to enjoining Defendants to provide Plaintiff with adequate and necessary medical care; enjoining Defendants to provide Plaintiff equal access to clothing, cosmetic, and hygiene items available to inmates housed in female institutions; enjoining Defendants to house Plaintiff at an institution consistent with her gender identity; declaring unconstitutional and violative of federal law Defendants' practices in denying Plaintiff and other similarly situated inmates with adequate and necessary medical treatment;
- b. For compensatory, general and special damages, in an amount to be determined at

trial;

- c. For punitive damages against individual Defendants and Corizon in an amount to be proven at trial;
- d. For reasonable costs of this suit and attorneys' fees and expenses; and
- d. For such further relief as the Court may deem just, proper, and appropriate

DEMAND FOR JURY

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands trial by jury.

Dated: January 31, 2019

Respectfully Submitted,

NATIONAL CENTER FOR LESBIAN RIGHTS
FERGUSON DURHAM
HADSELL STORMER & RENICK LLP

By: /s/ - Lori E. Rifkin
Lori E. Rifkin
Attorneys for Plaintiff

EXHIBIT E

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Counsel for Defendants Corizon Inc., Scott Eliason, Murray Young, and Catherine Whinnery

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO, in his
official capacity; JEFF ZMUDA, in his
official capacity; HOWARD KEITH
YORDY, in his official and individual
capacities; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG; RICHARD
CRAIG; RONA SIEGERT; CATHERINE
WHINNERY; AND DOES 1-15;

Defendants.

CIVIL ACTION FILE

NO. 1:17-cv-151-BLW

**DEFENDANTS CORIZON INC., SCOTT
ELIASON, MURRAY YOUNG, AND
CATHERINE WHINNERY'S ANSWER
TO PLAINTIFF'S THIRD AMENDED
COMPLAINT AND DEMAND FOR
JURY TRIAL**

COME NOW Defendants, Corizon Inc., Scott Eliason, Murray Young, and Catherine

Whinnery (hereinafter collectively "Corizon Defendants"), by and through their counsel of record,

DEFENDANTS CORIZON INC., SCOTT ELIASON, MURRAY YOUNG, AND CATHERINE WHINNERY'S
ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 1

the law firm of Parsons Behle & Latimer, and in answer to Plaintiff's Third Amended Complaint and Demand for Jury Trial (hereinafter "Amended Complaint") on file herein, answer, allege, and state as follows:

FIRST DEFENSE

Plaintiff's Amended Complaint, and each and every allegation contained therein, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Corizon Defendants deny each and every allegation in Plaintiff's Amended Complaint, except those allegations specifically admitted herein.

THIRD DEFENSE

With respect to the specific allegations contained in Plaintiff's Amended Complaint, Corizon Defendants admit or deny as follows:

INTRODUCTION

1. With respect to Paragraph 1 of Plaintiff's Third Amended Complaint, Corizon Defendants admit only that Plaintiff Edmo is currently incarcerated in an Idaho prison and that she was diagnosed with Gender Identity Disorder (now known as Gender Dysphoria)¹ in 2012 for which she has received appropriate medical and mental health care treatment and care. The remainder of the allegations are denied because it is an introduction with generalized information that does not include specific assertion of facts in this case, calls for expert testimony, calls for a legal conclusion, and/or lacks knowledge or information sufficient to form a belief about the truth of an allegation

¹ The terms Gender Identity Disorder (GID) and Gender Dysphoria (GD) will be used interchangeably in this Answer.

2. Corizon Defendants deny the allegations in Paragraph 2 of Plaintiff's Third Amended Complaint because it calls for expert testimony and legal conclusions.

3. With respect to the allegations in Paragraph 3 of Plaintiff's Third Amended Complaint, Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegation and, therefore, said allegations are denied.

4. With respect to the allegations in Paragraph 4 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that Plaintiff Edmo sought and received hormone therapy treatment for her GID diagnosis in and continuing after 2012. Corizon Defendants admit that Plaintiff Edmo later asked for a sex reassignment surgery assessment. Corizon Defendants admit that Plaintiff Edmo has received appropriate medical and mental health care for her GID within the confines of her cooperation. The remainder of the allegations in paragraph 4 or denied.

5. Corizon Defendants deny the allegations in Paragraph 5 of Plaintiff's Third Amended Complaint.

6. With respect to the allegations in Paragraph 6 of Plaintiff's Third Amended Complaint, Corizon Defendants deny they disciplined or punished Plaintiff Edmo for expressing her gender identity. The remainder of the allegations in paragraph 6 are denied because Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegation and, therefore, said allegations are denied

7. Corizon Defendants deny the allegations in Paragraph 7 of Plaintiff's Third Amended Complaint.

8. Paragraph 8 of Plaintiff's Third Amended Complaint related to relief sought and therefore should not require a response. To the extent a response is required, Corizon Defendants deny that Plaintiff Edmo is entitled to any relief and damages in this case.

JURISDICTION AND VENUE

9. With respect to the allegations in Paragraph 9 of Plaintiff's Third Amended Complaint, Corizon Defendants admit this Court has jurisdiction or supplemental jurisdiction over the causes of action asserted by Plaintiff in this case. Corizon Defendants deny that Plaintiff Edmo is entitled to declaratory and injunctive relief and damages. The remainder of the allegations are denied as calling for a legal conclusion.

10. With respect to the allegations in Paragraph 10 of Plaintiff's Third Amended Complaint, Corizon Defendants admit to venue in the District of Idaho. The remainder of the allegations are denied as calling for a legal conclusion.

11. Corizon Defendants deny the allegations in Paragraph 11 of Plaintiff's Third Amended Complaint.

PARTIES

12. With respect to the allegations in Paragraph 12 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that Plaintiff has been incarcerated in an Idaho prison since 2012. Corizon Defendants admit, based on information and belief, that Plaintiff Edmo is about 31 years of age and was or is a member of the Shoshone-Bannock Tribe. Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegation related to United States citizenship and, therefore, said allegations are denied on that basis. The remainder of the allegations are denied.

13. The allegations in Paragraph 13 of Plaintiff's Third Amended Complaint are not directed at the answering defendants herein and, therefore, should not require a response. To the extent a response is required, Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegations in paragraph 13 and, therefore, said allegations are denied

on that basis.

14. The allegations in Paragraph 14 of Plaintiff's Third Amended Complaint are not directed at the answering defendants herein and, therefore, should not require a response. To the extent a response is required, Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegations in paragraph 14 and, therefore, said allegations are denied on that basis.

15. The allegations in Paragraph 15 of Plaintiff's Third Amended Complaint are not directed at the answering defendants herein and, therefore, should not require a response. To the extent a response is required, Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegations in paragraph 15 and, therefore, said allegations are denied on that basis.

16. The allegations in Paragraph 16 of Plaintiff's Third Amended Complaint are not directed at the answering defendants herein and, therefore, should not require a response. To the extent a response is required, Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegations in paragraph 13 and, therefore, said allegations are denied on that basis.

17. Corizon Defendants deny the allegations in paragraph 17 of Plaintiff's Third Amended Complaint. Corizon Incorporated in not a proper party. Corizon Defendants admit that Corizon, LLC contracts with IDOC to provide certain medical, dental, psychiatric and mental health services only as provided for in said contracts and addendums or amendments thereto between Corizon, LLC and IDOC. Corizon Defendants admit they are to provide appropriate care and treatment to the inmates they care for as legally required and under the circumstances and judgement of their various professionals and staff.

18. With respect to the allegations in Paragraph 18 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that Scott Eliason, M.D. ("Dr. Eliason") has been the Corizon Idaho Regional Psychiatric Director from about April 2010 to present and, among other things, is an Idaho licensed psychiatrist, board certified in general and forensic psychiatry, and a Certified Correctional Healthcare Provider through the National Commission on Correctional Health Care ("NCCHC"). Dr. Eliason admits he was a member of the Idaho prison Management and Treatment Committee ("MTC") that discussed inmates with gender dysphoria and admits that he provided some treatment and care to Plaintiff Edmo. The remainder of the allegations in paragraph 18 are denied.

19. With respect to the allegations in Paragraph 18 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that Murray Young, M.D. ("Dr. Young") was the Corizon Idaho Regional Medical Director from about June 2013 to July 2016 and participated in some treatment and/or care decisions related to Plaintiff Edmo. The remainder of the allegations are denied.

20. The allegations in Paragraph 20 of Plaintiff's Third Amended Complaint are not directed at the answering defendants herein and, therefore, should not require a response. To the extent a response is required, Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegations in paragraph 20 and, therefore, said allegations are denied on that basis.

21. The allegations in Paragraph 21 of Plaintiff's Third Amended Complaint are not directed at the answering defendants herein and, therefore, should not require a response. To the extent a response is required, Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegations in paragraph 21 and, therefore, said allegations are denied

on that basis.

22. With respect to the allegations in Paragraph 22 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that Catherine Whinnery, M.D. ("Dr. Whinnery") was the medical director at Idaho State Correctional Institution (ISCI) from about January 2012 through February 2015 and provided certain medical care and/or treatment to inmates at ISCI, including Plaintiff Edmo. The remainder of the allegations are denied.

23. The allegations in Paragraph 23 of Plaintiff's Third Amended Complaint are not directed at the answering defendants herein and, therefore, should not require a response. To the extent a response is required, Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegations in paragraph 23 and, therefore, said allegations are denied on that basis.

24. The allegations in Paragraph 23 of Plaintiff's Third Amended Complaint are not directed at the answering defendants herein and, therefore, should not require a response. To the extent a response is required, Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegations in paragraph 23 and, therefore, said allegations are denied on that basis.

25. The allegations in Paragraph 25 of Plaintiff's Third Amended Complaint are denied as overbroad, vague, and calling for a legal conclusion.

FACTUAL ALLEGATIONS

26. The allegations in Paragraph 26 of Plaintiff's Third Amended Complaint call for expert and legal conclusions and, therefore, are denied on that basis. The allegations in Paragraph 26 are also denied as vague and overbroad. The resources listed in Paragraph 26 speak for themselves.

27. With respect to the allegations in Paragraph 27 of Plaintiff's Third Amended Complaint, Corizon Defendants deny they provided inadequate treatment and/or care to Plaintiff, deny any wrongdoing, and deny their care and/or treatment caused any injuries or damages to Plaintiff. The remainder of the allegations in Paragraph 27 of Plaintiff's Complaint call for expert and legal conclusions and, therefore, are denied on that basis.

28. With respect to the allegations in Paragraph 28 of Plaintiff's Third Amended Complaint, Corizon Defendants admit there is an organization called the World Professional Association for Transgender Health ("WPATH") and that it has published a resource called Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People ("WPATH resource"). Corizon Defendants admit that WPATH and said publication is a resource for medical and mental health care providers, but deny that WPATH and its resources are the only resource for medical and mental health care providers in assessing and treating patients and inmates with Gender Dysphoria. Corizon Defendants further deny that WPATH and its resources establish the standard of care for treating inmates with Gender Dysphoria. WPATH and its resources speak for themselves. The remainder of the allegations are denied as calling for expert and legal conclusions.

29. The allegations in Paragraph 29 of Plaintiff's Third Amended Complaint are not related to Corizon Defendant policies or procedures and, therefore, said allegations are denied for lack knowledge or information sufficient to form a belief about the truth of an allegations therein. IDOC policies and procedures speak for themselves.

30. The allegations in Paragraph 30 of Plaintiff's Third Amended Complaint are not related to Corizon Defendant policies or procedures and, therefore, said allegations are denied for lack knowledge or information sufficient to form a belief about the truth of an allegations therein.

IDOC policies and procedures speak for themselves.

31. The allegations in Paragraph 31 of Plaintiff's Third Amended Complaint are denied as calling for expert and legal conclusions. Corizon Defendants admit the WPATH resource speaks for itself.

32. The allegations in Paragraph 32 of Plaintiff's Third Amended Complaint are denied as calling for expert and legal conclusions. Corizon Defendants admit the WPATH resource and DSM-V speak for themselves.

33. The allegations in Paragraph 33 of Plaintiff's Third Amended Complaint are denied as calling for expert and legal conclusions. Corizon Defendants admit the WPATH resource speaks for itself.

34. The allegations in Paragraph 34 of Plaintiff's Third Amended Complaint are denied as calling for expert and legal conclusions. Corizon Defendants admit the WPATH resource speaks for itself.

35. The allegations in Paragraph 35 of Plaintiff's Third Amended Complaint are denied as calling for expert and legal conclusions. Corizon Defendants admit the WPATH resource speaks for itself.

36. The allegations in Paragraph 36 of Plaintiff's Third Amended Complaint are denied as calling for expert and legal conclusions. Corizon Defendants admit the WPATH resource speaks for itself. Corizon Defendants deny that the WPATH resource provides clear and specific treatment and care guidelines for inmates with Gender Dysphoria.

37. With respect to the allegations in Paragraph 37 of Plaintiff's Third Amended Complaint, based on information and belief, Corizon Defendants admit Plaintiff was born on or about October 29, 1987 in Pocatello, Idaho and that she is or was a member of the Shoshone-

Bannock tribe. The remainder of the allegations are denied for lack knowledge or information sufficient to form a belief about the truth of an allegations therein.

38. Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 38 of Plaintiff's Third Amended Complaint and, therefore, said allegations are denied on that basis.

39. Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 39 of Plaintiff's Third Amended Complaint and, therefore, said allegations are denied on that basis.

40. With respect to the allegations in paragraph 40 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that Plaintiff was incarcerated in an Idaho prison started in about 2012, that Dr. Eliason assessed Plaintiff with GID in about June 2012, Psychologist Claudia Lake, PsyD, also assessed Plaintiff and diagnosed her with GID in about July 2012.

41. With respect to the allegations in Paragraph 41 of Plaintiff's Third Amended Complaint, Corizon Defendants deny that failed to provide Plaintiff with individualized care and deny that they have provided inappropriate care and treatment to Plaintiff. The procedure identified in Paragraph 41 is not Corizon Defendant policies or procedures and, therefore, said allegations are denied for lack knowledge or information sufficient to form a belief about the truth of an allegations therein. IDOC policies and procedures speak for themselves.

42. Corizon Defendants deny the allegations in paragraph 42 of Plaintiff's Third Amended Complaint.

43. With respect to the allegations in Paragraph 43 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that Plaintiff submitted "Health Service Request" forms and that those forms speak for themselves. The remainder of the allegations are denied.

44. With respect to the allegations in Paragraph 44 of Plaintiff's Third Amended Complaint, Corizon Defendants deny that they provided improper care and treatment to Plaintiff.

- a. With respect to Paragraph 44.a. of Plaintiff's Third Amended Complaint, Corizon Defendants deny that their care and treatment, including by Dr. Whinnery, of Plaintiff was inappropriate on or about December 3, 2012. Furthermore, Corizon Defendants' care and treatment of Plaintiff was appropriate, especially under the penological purposes, policies and procedures at the time. The medical or other records speak for themselves. The remainder of the allegations are denied.
- b. With respect to Paragraph 44.b. of Plaintiff's Third Amended Complaint, Corizon Defendants deny that their care and treatment, including by Dr. Whinnery, of Plaintiff was inappropriate on or about October 16, 2013. Furthermore, Corizon Defendants' care and treatment of Plaintiff was appropriate, especially under the penological purposes, policies and procedures at the time. The medical or other records speak for themselves. The remainder of the allegations are denied.
- c. With respect to Paragraph 44.c. of Plaintiff's Third Amended Complaint, Corizon Defendants deny that their care and treatment, including by Dr. Young, of Plaintiff was inappropriate on or about November 16, 2013. Furthermore, Corizon Defendants' care and treatment of Plaintiff was appropriate, especially under the penological purposes, policies and procedures at the time. The medical or other records speak for themselves. The remainder of the allegations are denied.
- d. With respect to Paragraph 44.d. of Plaintiff's Third Amended Complaint, Corizon Defendants deny that their care and treatment, including by Dr. Young, of Plaintiff was inappropriate on or about December 16, 2013. Furthermore, Corizon

Defendants' care and treatment of Plaintiff was appropriate, especially under the penological purposes, policies and procedures at the time. The medical or other records speak for themselves. The remainder of the allegations are denied.

- e. With respect to Paragraph 44.e. of Plaintiff's Third Amended Complaint, Corizon Defendants deny that their care and treatment or actions related to Plaintiff on or around February 11, 2014, including by Dr. Young and Linda Gercke, were inappropriate. Furthermore, Corizon Defendants' care and treatment of Plaintiff was appropriate, especially under the penological purposes, policies and procedures at the time. The medical or other records speak for themselves. The remainder of the allegations are denied.
- f. The allegations in Paragraph 44.f of Plaintiff's Third Amended Complaint are not directed at the answering defendants and, therefore, should not require a response. To the extent a response is required, said allegations are denied for lack knowledge or information sufficient to form a belief about the truth of an allegations therein.
- g. With respect to Paragraph 44.g. of Plaintiff's Third Amended Complaint, Corizon Defendants deny that their care and treatment or actions related to Plaintiff on or around July 3, 2014, including by Dr. Whinnery, were inappropriate. Furthermore, Corizon Defendants' care and treatment of Plaintiff was appropriate, especially under the penological purposes, policies and procedures at the time. Dr. Whinnery denies she made the statement in paragraph g. as stated. The medical or other records speak for themselves. The remainder of the allegations are denied.
- h. The allegations in Paragraph 44.h. are denied for lack knowledge or information sufficient to form a belief about the truth of an allegations therein.

- i. With respect to Paragraph 44.i. of Plaintiff's Third Amended Complaint, Corizon Defendants deny that their care and treatment or actions related to Plaintiff on or around October 8, 2014, including by Dr. Whinnery, were inappropriate. Furthermore, Corizon Defendants' care and treatment of Plaintiff was appropriate, especially under the penological purposes, policies and procedures at the time. The remainder of the allegations are denied.
- j. With respect to Paragraph 44.j. of Plaintiff's Third Amended Complaint, Corizon Defendants deny that their care and treatment or actions related to Plaintiff on or around July 8, 2014, including by Dr. Whinnery, were inappropriate. Furthermore, Corizon Defendants' care and treatment of Plaintiff was appropriate, especially under the penological purposes, policies and procedures at the time. Dr. Whinnery denies she made the statement in paragraph j. as stated. The medical or other records speak for themselves. The remainder of the allegations are denied.
- k. With respect to Paragraph 44.k. of Plaintiff's Third Amended Complaint, Corizon Defendants admit that Plaintiff was assessed by Dr. Eliason regarding sex reassignment surgery. Dr. Eliason did not believe, based on his training, education, experience, his prior treatment and care of Plaintiff, his appointment with Plaintiff at that time, his medical judgment, and after staffing the assessment with other medical and mental health care providers, including a WPATH member, that Sex Reassignment Surgery (SRS) (a.k.a. Gender Confirmation Surgery (GCS))² was medically necessary at that time. Among other things, Dr. Eliason did not believe SRS was indicated for Plaintiff because her mental health conditions were not

² These terms are used interchangeably in this Answer.

adequately controlled and she had not sufficiently lived a real social experience as a woman. Dr. Eliason's April 20, 2016 note and his testimony and discovery responses in this case to date are incorporated herein. Dr. Eliason denies he made the statement alleged in paragraph k. of Plaintiff's Third Amended Complaint as stated. The remainder of the allegations are denied.

- l. deny that their care and treatment or actions related to Plaintiff on or around July 8, 2014, including by Dr. Whinnery, were inappropriate. Furthermore, Corizon Defendants' care and treatment of Plaintiff was appropriate, especially under the penological purposes, policies and procedures at the time. Dr. Whinnery denies she made the statement in paragraph j. as stated. The medical or other records speak for themselves. The remainder of the allegations are denied.

45. Defendants deny the allegations in Paragraph 45 of Plaintiff's Third Amended Complaint and specifically deny that any actions alleged in the paragraph were the result of Defendants failure to adequately treat Plaintiff's gender dysphoria.

46. With respect to the allegations in paragraph 46 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that Plaintiff's cut her testicles on or around September 29, 2015 and that she received appropriate medical care and treatment for this injury. The medical and other records related to this incident speak for themselves. The remainder of the allegations are denied.

47. With respect to the allegations in Paragraph 47 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that on or around December 31, 2016, Plaintiff lacerated her scrotum/exposed testicle and was sent to the ER at a hospital where she received treatment and care for the injury. The medical and other records related to this incident speak for themselves.

The remainder of the allegations are denied for lack knowledge or information sufficient to form a belief about the truth of an allegations.

48. With respect to the allegations in Paragraph 48 of Plaintiff's Third Amended Complaint, Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegations and, therefore, said allegations are denied on that basis.

49. Defendants deny the allegations in Paragraph 49 of Plaintiff's Third Amended Complaint.

50. With respect to the allegations in paragraph 50 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that Plaintiff was seen by an offsite physician, Dr. Alviso, in December 2016 related to managing Plaintiff's hormone therapy. Dr. Alviso's notes related to this appointment speak for themselves. Corizon Defendants deny that Plaintiff has not seen Dr. Alviso since December 2016. Corizon Defendants admit that Plaintiff's labs have been taken and her hormone levels have been monitored appropriately. The medical records and lab records speak for themselves. The remainder of the allegations in paragraph 50 are denied.

51. With respect to the allegations in Paragraph 51 of Plaintiff's Third Amended Complaint, Corizon Defendants lack knowledge or information sufficient to form a belief about the truth of an allegations and, therefore, said allegations are denied on that basis.

52. Corizon Defendants deny the allegations in Paragraph 52 of Plaintiff's Third Amended Complaint.

53. The allegations in Paragraph 53 of Plaintiff's Third Amended Complaint are not related to Corizon Defendants policies or procedures and, therefore said allegations are denied for lack of knowledge or information sufficient to form a belief about the truth of the allegations therein. IDOC policies and procedures speak for themselves.

54. The allegations in Paragraph 54 of Plaintiff's Third Amended Complaint relate to actions or inactions other than by the answering defendants herein and therefore should not require a response. To the extend a response is required, Corizon Defendants deny that they disciplined and punished Plaintiff for expressing her gender identity. Corizon Defendants lack of knowledge or information sufficient to form a belief about the truth of the allegations and therefore deny them on that basis.

55. Corizon Defendants lack of knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 55 of Plaintiff's Third Amended Complaint and therefore deny them on that basis.

56. Corizon Defendants lack of knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 56 of Plaintiff's Third Amended Complaint and therefore deny them on that basis.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Failure to Provide Necessary Medical Treatment (8th Amendment; 42 U.S.C. § 1983)

Against ALL Defendants Except IDOC

57. Corizon Defendants incorporate by reference all of their responses set forth in paragraphs 1 through 56 as though fully set forth herein.

58. With regard to Paragraph 58 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that Plaintiff was diagnosed with GID and has received appropriate care and treatment for GID within the confines of Plaintiff's cooperation. The remainder of the allegations are denied.

59. With regard to Paragraph 59 of Plaintiff's Third Amended Complaint, Corizon Defendants admit they are to provide appropriate care to inmates and Plaintiff under the law and the applicable standard of care. The remainder of the allegations are denied as calling for legal conclusions.

60. Corizon Defendants deny the allegations in Paragraph 60 of Plaintiff's Third Amended Complaint.

61. Corizon Defendants deny the allegations in Paragraph 61 of Plaintiff's Third Amended Complaint.

62. Corizon Defendants deny the allegations in Paragraph 62 of Plaintiff's Third Amended Complaint.

63. Corizon Defendants deny the allegations in Paragraph 63 of Plaintiff's Third Amended Complaint.

64. Corizon Defendants deny the allegations in Paragraph 64 of Plaintiff's Third Amended Complaint.

65. Corizon Defendants deny the allegations in Paragraph 65 of Plaintiff's Third Amended Complaint.

66. Corizon Defendants deny the allegations in Paragraph 66 of Plaintiff's Third Amended Complaint.

67. Corizon Defendants deny the allegations in Paragraph 67 of Plaintiff's Third Amended Complaint.

SECOND CLAIM FOR RELIEF

Violation of Equal Protection – Discrimination Based on Sex (14th Amendment; 42 U.S.C. § 1983)

Against All Defendants Except IDOC

68. Corizon Defendants incorporate by reference all of their responses set forth in paragraphs 1 through 67 as though fully set forth herein.

69. Paragraph 69 of Plaintiff's Third Amended Complaint calls for a legal conclusion and, therefore, is denied.

70. Corizon Defendants deny the allegations in Paragraph 70 of Plaintiff's Third Amended Complaint.

71. Corizon Defendants deny the allegations in Paragraph 71 of Plaintiff's Third Amended Complaint.

72. Corizon Defendants deny the allegations in Paragraph 72 of Plaintiff's Third Amended Complaint.

73. Corizon Defendants deny the allegations in Paragraph 73 of Plaintiff's Third Amended Complaint.

74. Corizon Defendants deny the allegations in Paragraph 74 of Plaintiff's Third Amended Complaint.

75. Corizon Defendants deny the allegations in Paragraph 75 of Plaintiff's Third Amended Complaint.

76. Corizon Defendants deny the allegations in Paragraph 76 of Plaintiff's Third Amended Complaint.

77. Corizon Defendants deny the allegations in Paragraph 77 of Plaintiff's Third Amended Complaint.

78. Corizon Defendants deny the allegations in Paragraph 78 of Plaintiff's Third Amended Complaint.

79. Corizon Defendants deny the allegations in Paragraph 79 of Plaintiff's Third Amended Complaint.

THIRD CLAIM FOR RELIEF

Violation of Equal Protection – Discrimination Based on Diagnosis of Gender Dysphoria (14th Amendment; U.S.C. § 1983)

Against All Defendants Except IDOC

80. Corizon Defendants incorporate by reference all of their responses set forth in paragraphs 1 through 79 as though set forth herein.

81. With regard to Paragraph 81 of Plaintiff's Third Amended Complaint, Corizon Defendants admit that IDOC policies and procedures speak for themselves. The remainder of the allegations are denied for lack of knowledge or information because they are IDOC policies and procedures.

82. With regard to Paragraph 82 of Plaintiff's Third Amended Complaint, Corizon Defendants admit only that they provide appropriate care and treatment of IDOC inmates and Plaintiff. The remainder of the allegations are denied.

83. Corizon Defendants deny the allegations in Paragraph 83 of Plaintiff's Third Amended Complaint.

84. Corizon Defendants deny the allegations in Paragraph 84 of Plaintiff's Third Amended Complaint.

85. Corizon Defendants deny the allegations in Paragraph 85 of Plaintiff's Third Amended Complaint.

86. Corizon Defendants deny the allegations in Paragraph 86 of Plaintiff's Third Amended Complaint.

87. Corizon Defendants deny the allegations in Paragraph 87 of Plaintiff's Third Amended Complaint.

88. Corizon Defendants deny the allegations in Paragraph 88 of Plaintiff's Third Amended Complaint.

FOURTH CLAIM FOR RELIEF

Discrimination on Basis of Disability (Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794a)

Against Defendants IDOC and Corizon

89. Corizon Defendants incorporate by reference all of their responses set forth in paragraphs 1 through 88 above as though fully set forth herein.

90. Corizon Defendants deny the allegations in Paragraph 90 of Plaintiff's Third Amended Complaint. Defendants also deny said allegations as calling for a legal conclusion.

91. Corizon Defendants deny the allegations in Paragraph 91 of Plaintiff's Third Amended Complaint.

92. Corizon Defendants deny the allegations in Paragraph 92 of Plaintiff's Third Amended Complaint.

93. Paragraph 93 of Plaintiff's Third Amended Complaint relates to a defendant other than the answering defendants and, therefore, should not require a response. To the extent a response is required, said allegations are denied as calling for a legal conclusion.

94. Corizon Defendants deny the allegations in Paragraph 94 of Plaintiff's Third Amended Complaint.

FIFTH CLAIM FOR RELIEF

Violation of Affordable Care Act (42 U.S.C. § 18116)

Against Defendants Atencio, Zmuda, and Yordy in their official capacities

95. Corizon Defendants incorporate by reference all of their responses set forth in paragraphs 1 through 94 above as though fully set forth herein.

96. The allegations in Paragraph 96 of Plaintiff's Third Amended Complaint relate to defendants, other than the answering defendants, and therefore should not require a response. To the extent a response is required, said allegations are denied for lack of knowledge and information. Said allegations also call for a legal conclusion.

97. The allegations in Paragraph 97 of Plaintiff's Third Amended Complaint relate to defendants, other than the answering defendants, and therefore should not require a response. To the extent a response is required, said allegations are denied for lack of knowledge and information. Said allegations also call for a legal conclusion.

98. The allegations in Paragraph 98 of Plaintiff's Third Amended Complaint relate to defendants, other than the answering defendants, and therefore should not require a response. To the extent a response is required, said allegations are denied for lack of knowledge and information. Said allegations also call for a legal conclusion.

99. The allegations in Paragraph 99 of Plaintiff's Third Amended Complaint relate to defendants, other than the answering defendants, and therefore should not require a response. To the extent a response is required, said allegations are denied for lack of knowledge and information.

100. The allegations in Paragraph 100 of Plaintiff's Third Amended Complaint relate to defendants, other than the answering defendants, and therefore should not require a response. To the extent a response is required, said allegations are denied for lack of knowledge and information.

SIXTH CLAIM FOR RELIEF

Negligence (Idaho State Law)

Against Defendants Atencop and Zmuda, in their official capacities; Defendant Yordy in his official and individual capacity; Defendant Corizon; and Defendants Custody Does

101. Corizon Defendants incorporate by reference all of their responses set forth in paragraphs 1 through 100 above as through fully set forth herein.

102. Corizon Defendants deny the allegations in Paragraph 102 of Plaintiff's Third Amended Complaint.

103. Corizon Defendants deny the allegations in Paragraph 103 of Plaintiff's Third Amended Complaint.

104. Corizon Defendants deny the allegations in Paragraph 104 of Plaintiff's Third Amended Complaint.

105. Corizon Defendants deny the allegations in Paragraph 105 of Plaintiff's Third Amended Complaint.

106. Corizon Defendants deny the allegations in Paragraph 106 of Plaintiff's Third Amended Complaint.

PRAYER FOR RELIEF

Plaintiff's prayer for relief should not require a response. To the extent a response is required, Corizon Defendants deny that Plaintiff is entitled to any and all relief sought, including but not limited denying Plaintiff is entitled to any and all injunctive and declaratory relief, damages, costs and fees.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff is barred from maintaining this action against the Corizon Defendants because the Plaintiff's Third Amended Complaint fails to state a claim against Corizon Defendants upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is barred from maintaining this action against Corizon Defendants because the Corizon Defendants at all times acted in a reasonable and prudent fashion, satisfying any duty, if any, which they owed under the rules, regulations, statutes, ordinances, customs, policies, and usages of the laws and the applicable standard of care of the State of Idaho and the United States, and no act or omission of the Corizon Defendants proximately caused Plaintiff's damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is barred from maintaining this action against Corizon Defendants because the actions of the Corizon Defendants have at all times been in reliance on the policies and procedures of the IDOC, and these policies and procedures are rationally related to legitimate penological objectives.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff is barred from maintaining this action against Corizon Defendants because Plaintiff has failed to state a claim for relief under the cruel and unusual punishment clause of the Eighth Amendment of United States Constitution and has not alleged facts which demonstrate that the Corizon Defendants acted with deliberate indifference to Plaintiff's medical needs.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is barred from maintaining this action because Plaintiff's alleged damages, if any, were proximately caused by her own actions and/or the actions of third persons or another party to this action.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is barred from maintaining this action because Plaintiff's alleged damages, if any, were caused in whole or in part by a preexisting condition, or the progression thereof, and not by the negligence or fault of the Corizon Defendants.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is barred from maintaining this action against the Corizon Defendants because the allegations contained in Plaintiff's Amended Complaint do not rise to the level of deprivation of rights which are protected by the United States Constitution or other federal law or any other legal provision referred to in Plaintiff's Amended Complaint.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff is barred from maintaining this action against the Corizon Defendants because Plaintiff's alleged damages, if any, were proximately caused, in whole or in part, by the superseding, intervening acts and/or omissions of the Plaintiff and/or other entities and/or persons not parties to this action, and/or other parties to this action.

NINTH AFFIRMATIVE DEFENSE

Plaintiff is barred from maintaining this action against the Corizon Defendants by reason of Plaintiff's failure to exhaust her administrative remedies.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's Amended Complaint fails to state a claim for relief against the Corizon

Defendants entitling Plaintiff to either punitive damages or equitable relief. Moreover, Plaintiff's claim for punitive damages is limited by I.C. § 6-1604 and other applicable state and federal laws.

ELEVENTH AFFIRMATIVE DEFENSE

Corizon Defendants are not liable for any injury caused by the acts or omissions of any individuals under the doctrine of respondeat superior under the 8th Amendment of the U.S. Constitution.

TWELFTH AFFIRMATIVE DEFENSE

The acts or omissions complained of by Plaintiff did not arise as a result of, nor was there, any agreement, understanding, policy or procedure which deprived Plaintiff of any of Plaintiff's civil rights.

THIRTEENTH AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims against the Corizon Defendants are barred by Idaho Code § 5-219(4) and/or other applicable statutes of limitations.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate damages, if any.

FIFTEENTH AFFIRMATIVE DEFENSE

Corizon Defendants deny any wrongdoing, but in the alternative, assert that the facts regarding the medical care Plaintiff received as alleged by Plaintiff would, at most, assert a claim of negligence which is insufficient to give rise to a constitutional claim under 42 U.S.C. § 1983.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff has suffered no physical injury and may not recover for any emotional injuries pursuant 42. U.S.C. § 1997(e) and other applicable federal and state law.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff has named an improper party to this action, namely Corizon, Inc.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are limited or barred by Idaho Code §§ 6-1603 and 6-1606.

NINETEENTH AFFIRMATIVE DEFENSE

The injury complained of, if any, was a known complication of Plaintiff's condition, treatment, and/or surgery.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by Idaho's medical malpractice act, Idaho Code Section 6-1001, *et seq.*

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's alleged injuries and/or damages, if any, were the result of Plaintiff's assumption of the risk, and Plaintiff's claims are barred thereby, in whole or in part.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Evidence may show that Plaintiff's claims are barred, in whole or in part, by release, promissory and/or equitable estoppel, waiver, unclean hands, and/or laches.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims that Corizon Defendants' alleged actions violated the equal protection clause of the Fourteenth Amendment fail because Corizon Defendants' alleged actions were reasonably related to legitimate penological interests.

RESERVATION OF RIGHTS

Discovery has not concluded in this matter, the result of which may reveal additional defenses to Corizon Defendants. Corizon Defendants reserve the right to amend this Answer.

REQUEST FOR ATTORNEY FEES

In order to defend this action, Corizon Defendants have been required to retain the services of Parsons, Behle & Latimer, and are entitled to recover all attorney fees and costs incurred and related in any way or leading up to this lawsuit, pursuant to 42 U.S. § 1988, the Federal Rules of Civil Procedure, and other applicable statutes, laws and rules.

DEMAND FOR JURY TRIAL

Corizon Defendants hereby demand a trial by jury on all issues so triable, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, and other applicable statutes, laws and rules.

PRAYER FOR RELIEF

WHEREFORE, Corizon Defendants pray for judgment as follows:

1. That the Amended Complaint be dismissed with prejudice and that Plaintiff takes nothing thereby;
2. For judgment against the Plaintiff for Corizon Defendants' costs and attorney fees incurred in the defense of this matter; and
3. For such other and further relief as this Court may deem just and proper under the circumstances.

DATED this 15th day of March, 2019.

PARSONS BEHLE & LATIMER

By: /s/ Dylan A. Eaton

Dylan A. Eaton
Counsel for Defendants Corizon Inc.,
Scott Eliason, Murray Young, and
Catherine Whinnery

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of March, 2019, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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By: /s/ Dylan A. Eaton
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EXHIBIT F

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

ADREE EDMO,	)	Case No. 1:17-cv-151-BLW
	)	
Plaintiff,	)	IDOC DEFENDANTS' ANSWER TO
vs.	)	PLAINTIFF'S THIRD AMENDED
	)	COMPLAINT
IDAHO DEPARTMENT OF	)	
CORRECTION; HENRY ATENCIO, in	)	
his official capacity; JEFF ZMUDA, in	)	
his official capacity; HOWARD KEITH	)	
YORDY, in his official and individual	)	
capacities; CORIZON, INC.; SCOTT	)	
ELIASON; MURRAY YOUNG;	)	
RICHARD CRAIG; RONA SIEGERT;	)	
CATHERINE WHINNERY; AND	)	
DOES 1-15;	)	
	)	
Defendants.	)	
_____	)	

COME NOW, Defendants Idaho Department of Corrections (“IDOC”), Henry Atencio, Jeff Zmuda, Howard Keith Yordy, Richard Craig, and Rona Siegert (collectively, “these answering Defendants” or “IDOC Defendants”) by and through their counsel, Brady J. Hall, Special Deputy Attorney General, State of Idaho, and Marisa S. Crecelius, of the law firm Moore Elia Kraft & Hall, LLP, and in answer to Plaintiff’s *Third Amended Complaint* filed January 31, 2019, hereby admit, deny and allege as follows:

FIRST DEFENSE

Plaintiff’s *Third Amended Complaint* fails to state a claim against these answering Defendants upon which relief can be granted.

SECOND DEFENSE

These answering Defendants deny each and every allegation of Plaintiff’s *Third Amended Complaint* not herein expressly and specifically admitted.

THIRD DEFENSE

1. Paragraphs 1-8 in the “Introduction” section of the Plaintiff’s *Third Amended Complaint* are a narrative summary of the Plaintiff’s allegations, which are later alleged individually within the body of the Plaintiff’s *Third Amended Complaint*. These answering Defendants will answer each individual allegation below and therefore, no duplicative response to the “Introduction” is required. Notwithstanding, these answering Defendants deny any and all allegations that these Defendants punished, disciplined, retaliated, or discriminated against Plaintiff for expressing Plaintiff’s gender identity; refused to allow Plaintiff access to medically necessary treatment; or otherwise committed acts in violation of the Eighth and Fourteenth Amendments to the United States Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or the Affordable Care Act. Moreover, these Defendants admit that

Plaintiff has been diagnosed with Gender Dysphoria (GD) and that she has received appropriate and necessary medical and mental health care for Plaintiff's GD diagnoses. To the extent any further response is required, these answering Defendants deny the remaining allegations set forth in paragraphs 1 through 8 because the allegations allege only generalized information, call for expert testimony and/or a legal conclusion, and because these Defendants lack knowledge or information sufficient to form a belief about the truth of those allegations. These Defendants further deny that Plaintiff is entitled to any relief or damages in this case.

2. Regarding the allegations set forth in paragraph 9, these answering Defendants admit that this Court has jurisdiction over the subject matter of Plaintiff's *Third Amended Complaint*. These Defendants deny that Plaintiff is entitled to any relief including, but not limited to, declaratory and injunctive relief or damages.

3. Regarding the allegations set forth in paragraph 10, these answering Defendants admit that this case is properly venued in this Court. These Defendants deny the remaining allegations and any inferences that the non-specific and generalized "events" occurred or impose liability.

4. These answering Defendants deny the allegations set forth in paragraph 11 as phrased. These Defendants previously motioned the Court regarding exhaustion of remedies (Dkt. 39) and the Court made a ruling (Dkt. 66) in which the Court granted, in part, these Defendants' motion. Defendants' position regarding Plaintiff's failure to properly exhaust has not changed and these Defendants do not waive any right to appeal the Court's ruling (Dkt. 66) by way of this answering paragraph.

5. Regarding the allegations set forth in paragraph 12, these answering Defendants admit that Plaintiff is 31 years old and has been incarcerated in IDOC custody since April, 2012.

These answering Defendants deny the remainder of the allegations alleged in paragraph 12. Plaintiff is currently housed at Idaho State Correctional Center (“ISCC”) in Kuna, Idaho.

6. Regarding the allegations set forth in paragraph 13, these answering Defendants admit that IDOC is responsible for managing felony offenders housed in prisons and supervised on probation and parole. IDOC houses inmates in ten prisons and four community reentry centers. These answering Defendants deny the remainder of the allegations alleged in paragraph 13. Plaintiff is currently housed at ISCC.

7. These Answering Defendants deny the allegations set forth in paragraph 14. Defendant Henry Atencio is not the current Director of IDOC. The current Director is Josh Tewalt.

8. Regarding the allegations set forth in paragraph 15, these answering Defendants only admit that Defendant Jeff Zmuda is the current Deputy Director of IDOC. These answering Defendants deny the remainder of the allegations set forth in paragraph 15 as phrased.

9. Regarding the allegations set forth in paragraph 16, these answering Defendants admit that Defendant Keith Yordy was the Warden of Idaho State Correctional Institution (ISCI) from January, 2014 to August, 2018. Since August, 2018, Defendant Yordy has been the Warden at Idaho Maximum Security Institution (“IMSI”). These answering Defendants deny the remainder of the allegations set forth in paragraph 16 as phrased.

10. The allegations set forth in paragraphs 17, 18, and 19 are directed to parties other than these answering Defendants and therefore no response is required. To the extent a response is required, these Defendants lack knowledge or information sufficient to form a belief about the truth of those allegations, and therefore deny the same on that basis.

11. These answering Defendants admit the allegations set forth in paragraph 20 as phrased, but deny any inference or allegations that Defendant Craig provided any unspecified

medical services beyond his scope of practice or improperly, negligently, or otherwise provide care not meeting the applicable standards of care or constitutional requirements.

12. Regarding the allegations set forth in paragraph 21, these answering Defendants admit that, at all times relevant to the allegations set forth in Plaintiff's *Third Amended Complaint*, Defendant Rona Siegert has been employed as the Health Services Director at ISCI and has, at various times, attended meetings of the Management and Treatment Committee ("MTC") during which Plaintiff was discussed. These answering Defendants deny the remainder of the allegations set forth in paragraph 21.

13. The allegations set forth in paragraphs 22, 23, and 24 are directed to parties other than these answering Defendants and therefore no response is required. To the extent a response is required, these Defendants lack knowledge or information sufficient to form a belief about the truth of those allegations, and therefore deny the same on that basis.

14. Regarding the allegations of paragraph 25, these answering Defendants deny the allegations as they are non-specific and overly broad. Absent identification of a specific defendant, acts, and time period, these Defendants lack the knowledge or information sufficient to form a belief about the truth of those allegations.

15. Regarding the allegations set forth in paragraphs 26, 27, and 28, these Defendants deny the same as they call for expert and legal conclusions, raise only general, vague, and overbroad allegations, and reference documents and written authorities that speak for themselves. Notwithstanding, these Defendants admit that GD is a mental health disorder recognized and set forth in the DSM-V and further admit that the World Professional Association for Transgender Health (WPATH) is an organization that publishes flexible clinical guidelines and recommendations for application by mental health and medical providers. These Defendants deny

that the WPATH is the definitive or only resource for medical and mental health care providers to utilize in assessing and treating patients and inmates with GD. These Defendants further deny that the WPATH and its resources establish the standard of care for treating inmates with GD. Furthermore, these Defendants deny any allegation or inference contained in these paragraphs that these Defendants provided inadequate treatment or mental health care to Plaintiff, committed any wrongdoing, or that Plaintiff is entitled to any relief, including damages, from these Defendants.

16. These answering Defendants need not admit nor deny the allegations set forth in paragraphs 29 and 30 of Plaintiff's *Third Amended Complaint*, as the same cite IDOC policy and standard operating procedures, which speak for themselves.

17. These answering Defendants need not admit nor deny the allegations set forth in paragraphs 31, 32, 33, 34, 35, and 36 of Plaintiff's *Third Amended Complaint*, as the same cite the DSM-V and "Standards of Care for the Health of Transgender, and Gender Nonconforming People," the latter of which are flexible clinical guidelines developed by the WPATH. The DSM-V and WPATH guidelines speak for themselves and, allegations contained therein raise matters calling for expert and legal conclusions. The allegations contained in the above-referenced paragraphs are also vague and overly broad and do not provide any specifics facts or individual circumstances from which the generalized conclusions and statements can be drawn or inferred. Notwithstanding, these Defendants deny that the WPATH resources set forth clear and specific treatment and care guidelines for inmates with GD.

18. The allegations set forth in paragraphs 37 and 38 are provided for purely background and informational purposes and therefore do not require a response to the same. Notwithstanding, to the extent a response is required, these Defendants do not deny the accuracy of Plaintiff's stated date and location of birth, but lack knowledge or belief sufficient to admit or

deny the remainder of the allegations contained therein, and therefore deny the same.

19. Regarding the allegations set forth in paragraph 39, these Defendants deny that Plaintiff lived full-time as a woman at any time prior to Plaintiff's incarceration. These Defendants lack knowledge or information sufficient to form a belief about the truth of the remainder of the allegations contained therein, and therefore deny those allegations on that basis.

20. These answering Defendants admit the allegations set forth in paragraph 40.

21. These answering Defendants need not admit nor deny the allegations set forth in the first sentence in paragraph 41, as the same cites an IDOC standard operating procedure, which speaks for itself. These answering Defendants deny the remaining allegations as generally alleged and specifically deny that Defendants failed to provide Plaintiff with individualized, adequate, or otherwise proper treatment and care.

22. These answering Defendants deny the allegations set forth in paragraph 42.

23. Regarding the allegations set forth in paragraph 43 and 44 of the Plaintiff's *Third Amended Complaint*, these answering Defendants admit that Plaintiff has submitted Health Services Requests forms and Concern forms and that those documents speak for themselves. Absent specifics regarding individual forms and requests, these Defendants lack knowledge or belief sufficient to admit or deny any allegations or inferences, and therefore deny the same on that basis. Notwithstanding, these Defendants deny any allegation or inferences that Plaintiff properly exhausted the administrative remedies. These Defendants previously motioned the Court regarding exhaustion of remedies (Dkt. 39) and the Court made a ruling (Dkt. 66) in which the Court granted, in part, these Defendants' motion. Defendants' position regarding Plaintiff's failure to properly exhaust has not changed and these Defendants do not waive any right to appeal the Court's ruling (Dkt. 66) by way of this answering paragraph. Moreover, these Defendants denied

all allegations contained in paragraph 44 and its subparts alleging that these Defendants ignored and/or denied Plaintiff's requests for treatment or otherwise denied to provide Plaintiff with adequate, constitutional, or necessary medical or mental health treatment of any kind. Finally, many of the subparts in paragraph 44 are directed to other Defendants and, therefore, do not require a response by these Defendants. To the extent responses are required, these Defendants lack knowledge and information sufficient to form a belief about the truth of those allegations and, therefore, deny said allegations on that basis.

24. Regarding the allegations set forth in paragraph 45 of Plaintiff's *Third Amended Complaint*, these answering Defendants admit only that Plaintiff alleges to have attempted to self-castrate on two occasions. Plaintiff testified that she never attempted suicide after Plaintiff's incarceration in 2012, Defendants deny the allegation that she attempted suicide in February 2014 and allege that specific allegation was improperly included in the *Third Amended Complaint*. These answering Defendants deny the remaining allegations set forth in paragraph 45 and specifically deny that Plaintiff's alleged intentional self-harm actions were the result of Defendants' alleged acts or omissions. Further, these Defendants deny any allegations or inferences that Plaintiff was denied medically-necessary treatment.

25. Regarding the allegations set forth in paragraphs 46, 47 and 49 of Plaintiff's *Third Amended Complaint*, these answering Defendants admit that Plaintiff was provided medical treatment and close observation following both of the intentional self-castration attempts committed by Plaintiff. The medical and other records surrounding this event speak for themselves. As to what Plaintiff was aware or "unaware" of is beyond the knowledge or belief of these Defendants and therefore deny those allegations on that basis. These answering Defendants deny the remaining allegations contained in these paragraphs.

26. Regarding the allegations set forth in paragraph 50 of Plaintiff's *Third Amended Complaint*, these answering Defendants admit that Plaintiff has received treatment with Dr. Marvin Alviso at the request of other Defendants. These Defendants deny that Plaintiff has not seen Dr. Alviso since December 2016. As to the specifics of the treatment Dr. Alviso has provided to Plaintiff, Dr. Alviso's notes speak for themselves and these Defendants lack information or knowledge beyond what is contained in Dr. Alviso's notes and his testimony on the record in this case.

27. These answering Defendants do not have sufficient information to either admit or deny the allegations set forth in paragraph 51 of the Plaintiff's *Third Amended Complaint* and, therefore, said allegations are denied on that basis.

28. These answering Defendants deny the allegations set forth in paragraph 52 of the Plaintiff's *Third Amended Complaint*.

29. These answering Defendants need not admit nor deny the allegations set forth in the first sentence in paragraph 53 of Plaintiff's *Third Amended Complaint*, as the same cites an IDOC standard operating procedure, which speaks for itself.

30. These answering Defendants deny the first sentence of paragraph 54 of the Plaintiff's *Third Amended Complaint*. These answering Defendants admit that Plaintiff has received over thirty Disciplinary Offense Reports (DORs) for various offenses, including Destruction of Property for cutting prison-issued underwear into thong underwear. These answering Defendants also admit that Plaintiff has received several DORs for Disobedience to Orders for refusing to comply with direct orders to remove makeup or change hairstyles that created a sexually-charged environment within the male prison. These Defendants also admit that Plaintiff has received a DOR for possession of unauthorized property for having items that were

not purchased from commissary and constituted contraband. Those disciplinary offense reports speak for themselves. These answering Defendants deny that Plaintiff has received a single DOR for wearing makeup or wearing feminine hairstyles. These Defendants further deny that Plaintiff's intentional actions that resulted in disciplinary offenses equate to these Defendants having disciplined or punished Plaintiff for expressing Plaintiff's gender identity. Plaintiff has long been able to express Plaintiff's preferred gender consistent with policies and absent punishment or discipline. However, Plaintiff's repeated and deliberate violation of the prison policies and rules aimed, in part, at preventing a sexually-charged environment, posed a significant and legitimate threat to the safe and secure operation of the prison.

31. As to the allegations set forth in paragraph 55 of Plaintiff's *Third Amended Complaint*, these Defendants admit that inmates with a diagnoses of GD are permitted to purchase makeup and other female accoutrements from the commissary.

32. These answering Defendants deny the allegations set forth in paragraph 56 of Plaintiff's *Third Amended Complaint*. Plaintiff is ineligible for parole due to Plaintiff's repeated and deliberate refusal to complete Sex Offender Treatment Programming (SOTP) which was repeatedly communicated to Plaintiff as a pre-requisite to consideration for parole.

33. Regarding to the allegations set forth in paragraph 57 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

34. Regarding the allegations set forth in paragraph 58 of Plaintiff's *Third Amended Complaint*, these answering Defendants admit that Plaintiff was diagnosed with Gender Dysphoria (formerly known as Gender Identity Disorder) in 2012 along with Plaintiff's other co-existing mental health conditions, including depression, anxiety, and Borderline Personality Disorder traits.

These Defendants deny the remaining allegations set forth in paragraph 58 of Plaintiff's *Third Amended Complaint* and specifically deny the allegations that Plaintiff has not received appropriate and necessary medical care for GD, with the exception of Plaintiff's repeated failures to participate in her recommended treatment and therapies.

35. As to the allegations set forth in paragraph 59 of Plaintiff's *Third Amended Complaint*, these Defendants admit that the Defendants are to provide appropriate medical care to inmates under the constitution, laws, and applicable standard of care. These Defendants deny the remainder of the allegations as calling for legal conclusions.

36. These answering Defendants deny the allegations set forth in paragraphs 60, 61, 62, 63, 64, 65, 66, and 67 of Plaintiff's *Third Amended Complaint*.

37. Regarding to the allegations set forth in paragraph 68 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

38. These answering Defendants need not admit nor deny the allegations set forth in the first sentence in paragraph 69 of Plaintiff's *Third Amended Complaint*. The Equal Protection Clause of the Fourteenth Amendment speaks for itself and interpretation of the same is a legal question for this Court to decide.

39. These answering Defendants deny the allegations set forth in paragraphs 70, 71, 72, 73, 74, 75, 76, 77, 78, and 79 of Plaintiff's *Third Amended Complaint*.

40. Regarding to the allegations set forth in paragraph 80 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

41. These answering Defendants need not admit nor deny the allegations set forth in

paragraph 81 of Plaintiff's *Third Amended Complaint*, as the same cites IDOC standard operating procedures and policies, which speak for themselves.

42. These answering Defendants deny the allegations set forth in paragraphs 82, 83, 84, 85, 86, 87 and 88 of Plaintiff's *Third Amended Complaint*.

43. Regarding to the allegations set forth in paragraph 89 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

44. These answering Defendants deny the allegations set forth in paragraphs 90, 91, 92, 93 and 94 of Plaintiff's *Third Amended Complaint*.

45. Regarding to the allegations set forth in paragraph 95 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

46. These answering Defendants need not admit nor deny the allegations set forth in the first sentence in paragraph 96 of Plaintiff's *Third Amended Complaint*. Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116, speaks for itself and interpretation of the same is a legal question for this Court to decide.

47. These answering Defendants deny the allegations set forth in paragraphs 97, 98, 99, and 100 of Plaintiff's *Third Amended Complaint*.

48. Regarding to the allegations set forth in paragraph 101 of Plaintiff's *Third Amended Complaint*, these answering Defendants incorporate each of the responses, denials, and admissions as set forth above.

49. These answering Defendants deny the allegations set forth in paragraphs 102, 103, 104, 105 and 106 of Plaintiff's *Third Amended Complaint*.

50. As to the content contained in the “Prayer for Relief” section on pages 22 and 23 of Plaintiff’s *Third Amended Complaint*, these Defendants need not provide a response. To the extent a response is required, these Defendants deny that Plaintiff is entitled to any and all relief sought in that section including in subparts (a) through (d).

AFFIRMATIVE DEFENSES

That at the time of filing this Answer, these answering Defendants have not been able to engage in adequate discovery and lack information sufficient to form a belief as to all of those affirmative defenses that might apply in this instance. At this time, pursuant to Rule 12 of the Federal Rules of Civil Procedure, these answering Defendants assert the following affirmative defenses so that the same are not waived. If actual information is not developed sufficient to assert any specific defense, the affirmative defense in question will be withdrawn.

The foregoing defenses are applicable, or appropriate, to any and all of Plaintiff’s claims for relief. In asserting these defenses, these answering Defendants do not admit that they have the burden of proving the allegations or denials set forth in the defenses, but, to the contrary, assert that by reason of the denials and/or by reason of relevant statutory or judicial authority, the burden of proving the facts relevant to many of the defenses and/or burden of proving the inverse to the allegations set forth in many defenses is upon the Plaintiff. These answering Defendants do not admit, in asserting any defense, any responsibility or liability, but, to the contrary, specifically deny any and all allegations of responsibility and liability set forth in the *Third Amended Complaint*.

These answering Defendants have considered and believe that they may have additional defenses to the *Third Amended Complaint*, but cannot at this time, consistent with Rule 11 of the Federal Rules of Civil Procedure, state with specificity those defenses. Accordingly, these

answering Defendants reserve the right to supplement their Answer and add additional affirmative defenses as discovery in this case progresses.

FIRST AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery in whole or in part for failure to mitigate damages.

SECOND AFFIRMATIVE DEFENSE

To the extent Plaintiff's claims sound in equity, Plaintiff's claims are barred by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

Plaintiff has waived the right, and/or is estopped to assert the various claims and causes of action alleged against these answering Defendants.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims against these Defendants fail to make out a case for actual participation in unlawful and/or unconstitutional conduct.

FIFTH AFFIRMATIVE DEFENSE

The alleged actions of these Defendants, if any, do not rise to the level of a deprivation of a constitutionally protected right.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff consented to the events, occurrences, and damages alleged.

SEVENTH AFFIRMATIVE DEFENSE

These answering Defendants allege they are not liable for an injury or damage caused by the act or omission of another person, if any, under a theory of *respondeat superior*.

EIGHTH AFFIRMATIVE DEFENSE

These answering Defendants are entitled to qualified or absolute immunity.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are invalid for failure to allege or prove damages which are the result of an unconstitutional policy, action, or custom.

TENTH AFFIRMATIVE DEFENSE

Any and all conduct of these answering Defendants with respect to matters alleged in Plaintiff's *Third Amended Complaint* were justifiable, reasonable, authorized by law, and performed in good faith with a belief that such acts were proper, legal, adequate, and appropriate.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to exhaust all administrative remedies and prerequisites to suit required under Federal and Idaho law.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim for relief under the cruel and unusual punishment clause of the Eighth Amendment to the United States Constitution because she has not alleged facts that demonstrate that these answering Defendants acted with deliberate indifference to a serious medical need of Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

All or some of Plaintiff's claims are barred by the failure to file a proper notice of tort claim, Idaho Code § 6-906, et seq.

FOURTEENTH AFFIRMATIVE DEFENSE

All or some of Plaintiff's claims for damages and/or equitable relief are barred by the applicable statute of limitations.

FIFTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are immune from liability as to state law claims for damages,

if any, pursuant to Idaho Code §§ 6-904(1) and 6-904B(5).

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, were caused by the acts or omissions of other persons or entities for which these answering Defendants are not responsible.

SEVENTEENTH AFFIRMATIVE DEFENSE

All or a portion of Plaintiff's damages are the result of pre-existing medical conditions or the progression thereof that were neither aggravated nor exacerbated by any acts or omissions of these answering Defendants.

EIGHTEENTH AFFIRMATIVE DEFENSE

The acts or omissions complained of by Plaintiff did not arise as a result of, nor was there any agreement, understanding, policy, or procedure which deprived Plaintiff of any civil rights.

NINETEENTH AFFIRMATIVE DEFENSE

At no time did the answering Defendants act in concert or intentionally act to deprive the Plaintiff of her civil rights.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff has suffered no physical injury and may not recover for any emotional injuries pursuant 42. U.S.C. § 12997e(e) and other applicable federal and state law.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are limited or barred by Idaho Code §§ 6-1603 and 6-1606.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's causes of action for declaratory and injunctive relief are not ripe and/or Plaintiff lacks the requisite standing.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The allegations set forth in the *Third Amended Complaint* regarding these answering Defendants' alleged acts or omissions do not show or allege the sufficient likelihood of future injury or irreparable harm for declaratory and/or injunctive relief.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The allegations set forth in the *Third Amended Complaint* regarding these answering Defendants' alleged acts or omissions do not clearly show that Plaintiff will suffer actual harm for declaratory and/or mandatory injunctive relief.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's request for injunctive relief is based upon mere speculation and there is insufficient evidence that any future event complained of will or will not occur.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff's request for injunctive relief does not show or sufficiently allege the existence of immediate or irreparable or actual injury.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's request for injunctive relief does not show or sufficiently allege the existence of a clear or reasonable likelihood of success.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's request for injunctive relief does not show or sufficiently allege that the facts and law are clearly in Plaintiff's favor for an award of mandatory or permanent injunctive relief.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims for punitive damages violate the Constitution of the United States and the Constitution of the State of Idaho. Should it be subsequently determined that Plaintiff is entitled

to seek punitive damages against these answering Defendants at trial, these Defendants demand a bifurcated trial.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiff is barred in whole or in part from maintaining this action because Plaintiff's alleged damages, if any, were proximately caused by Plaintiff's own deliberate and intentional actions and/or the actions of third parties for whom these Defendants are not responsible.

THIRY-FIRST AFFIRMATIVE DEFENSE

Plaintiff is barred from maintaining this action against these Defendants because Plaintiff's alleged damages, if any, were proximately caused, in whole or in part, by the superseding, intervening acts and/or omissions of the Plaintiff and/or other entities and/or persons not parties to this action, and/or other parties to this action.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's equal protection claims fail because the allegedly discriminatory actions or policies of the Defendants, if any, were reasonably related to legitimate penological interests.

PRAYER FOR RELIEF

WHEREFORE, these Defendants pray that Plaintiff's *Third Amended Complaint* be dismissed with prejudice, that Plaintiff takes nothing by this action, that Judgment be entered in favor of these answering Defendants and against Plaintiff, and that these answering Defendants are awarded costs of suit and attorney fees, and such other and further relief as the Court deems just.

DEMAND FOR JURY TRIAL

These answering Defendants demand a trial by jury on Plaintiff's *Third Amended Complaint*, on all issues, claims, and defenses so triable, pursuant to the Constitution and laws of the United States and the State of Idaho and Rule 38(b) of the Federal Rules of Civil Procedure.

DATED this 15th day of March, 2019.

MOORE ELIA KRAFT & HALL, LLP

/s/ Brady J. Hall
Brady J. Hall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of March, 2019, I filed the foregoing electronically through the CM/ECF system. I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

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